

In the Matter Of:

CRYSTAL TRAWICK vs. CARMIKE CINEMAS, INC.

**DEPOSITION OF
DAVID PASSMAN**

October 11, 2017



1201 West Peachtree Street
Suite 2300
Atlanta, GA 30309
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CRYSTAL TRAWICK vs. CARMIKE CINEMAS, INC.
DAVID PASSMAN on 10/11/2017

DEPOSITION OF

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

CRYSTAL TRAWICK,)	
)	
Plaintiff,)	Case File No.
)	4:16-CV-380-CDL
vs.)	
)	
CARMIKE CINEMAS, INC.,)	
)	
Defendant.)	

Oral deposition of DAVID PASSMAN, witness,
called by the plaintiff, before Eric Cavanaugh,
Certified Court Reporter, held at Page, Scrantom,
Sprouse, Tucker & Ford, 1111 Bay Avenue, Third
Floor, Columbus, Georgia, 31901, on the 11th day of
October, 2017, commencing at 9:36 a.m.

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S T I P U L A T I O N S

IT IS STIPULATED AND AGREED by and between
counsel appearing for the respective parties that:

(1) The oral deposition of DAVID PASSMAN,
called by the plaintiff, taken before Eric
Cavanaugh, at 1111 Bay Avenue, Third Floor,
Columbus, Georgia, commencing at 9:36 a.m. on the
11th day of October, 2017;

(2) ALL FORMALITIES with reference to notice
or taking, notice of time and place of taking,
qualifications of the court reporter, and all
other matters precedent to the taking of
deposition, are WAIVED;

(3) With consent of deponent, the reading and
signing of the deposition by deponent is NOT
WAIVED;

(4) ALL OBJECTIONS, EXCEPT as to the form of
the question and responsiveness of the answer, are
RESERVED to the time of the hearing of the case;
and

(5) ALL FORMALITIES with reference to the
filing of deposition, including notice of filing,
et cetera, are WAIVED.

1 MS. PREBULA: This will be the deposition of
2 David Passman taken for purposes of discovery,
3 cross-examination and all other purposes permitted
4 by law.

5 We agreed in the Sailors' deposition to
6 reserve objections except as to the form of the
7 question and the responsiveness of the answer and
8 attorney-client privilege.

9 Do you agree to that still, Mr. Gerakitis?

10 MR. GERAKITIS: Same stipulation. And we
11 stipulated in Sailors and the other depositions
12 that the witness can read and sign his deposition
13 before any notary public; not necessarily the
14 notary who takes down or transcribes the
15 deposition.

16 MS. PREBULA: Right. Agreed.

17 And you are going to read and sign,
18 Mr. Passman?

19 DEPONENT PASSMAN: I assume so.

20 MS. PREBULA: Will you swear in the witness.

21 DAVID PASSMAN,

22 Having been duly sworn, testified under oath
23 as follows:

24 E X A M I N A T I O N

25 BY MS. PREBULA:

1 Q. Mr. Passman, my name is Mary Prebula. And I'm
2 sure Mr. Gerakitis has told you, I represent the
3 plaintiff in this case, Crystal Trawick. And I'm
4 going to ask you a series of questions.

5 Have you ever had your deposition taken
6 before?

7 A. I have.

8 Q. Okay. So you know how it works. It's easier
9 for the court reporter if you let me finish my
10 question and we try not to talk over each other so he
11 can take it down.

12 And if you answer my question, I'm going to
13 assume you understood it. So if you don't understand
14 a question, if you will please let us know so we have
15 a clean record.

16 A. Okay.

17 Q. So if you would state your full legal name.

18 A. Sidney David Passman, III.

19 Q. And how do you spell Sidney?

20 A. S-i-d-n-e-y.

21 Q. All right. Where do you currently reside?
22 You don't have to give me your street address.

23 A. In Columbus, Georgia.

24 Q. All right. And how long have you lived in
25 Columbus, Georgia?

1 A. Off and on since 2009.

2 Q. You moved to Columbus, Georgia in 2009 from
3 Atlanta?

4 A. Well, I commuted back and forth to Atlanta. I
5 had an apartment here and a home in Atlanta in 2009.

6 Q. And when did you permanently move to Columbus?

7 A. I don't remember.

8 Q. Sometime in 2009.

9 A. No.

10 Q. No?

11 A. No. In 2009 through probably 2012 or '13, I
12 commuted back and forth. Stayed here on weekdays.
13 Went home to Atlanta on weekends. And then somewhere
14 in 2011, '12, or '13, I stayed here more than in
15 Atlanta. So I would say it became my permanent
16 residence.

17 Q. Did you change your voter registration?

18 A. I did.

19 Q. When did you change that?

20 A. I don't remember.

21 Q. And did you buy a house here?

22 A. I did.

23 Q. When did you buy the house?

24 A. In November, 2015.

25 Q. Okay. And are you related to any persons in

1 Columbus, Georgia?

2 A. Not -- not that I recall, no.

3 Q. Okay. But you're married, right?

4 A. Yes, I am.

5 Q. And what is your wife's name?

6 A. Brigitte.

7 Q. How do you spell Brigitte?

8 A. B-r-i-g-i-t-t-e.

9 Q. And what is her full name?

10 A. Brigitte Grace Passman.

11 Q. What is her birth name?

12 A. Brigitte Grace Buehlman. B-u-e-h-l-m-a-n.

13 Q. And she lives in Columbus, correct?

14 A. She does.

15 Q. All right. When did you get married?

16 A. In July of 2015.

17 Q. Have you been married before?

18 A. Yes.

19 Q. Does your ex-wife live in Columbus, Georgia?

20 A. No, she does not.

21 Q. Okay. And do you have any children that live
22 in Columbus, Georgia?

23 A. No, I do not.

24 Q. And with regard to all those persons, do any
25 of them live within Muscogee County?

1 A. No, they do not.

2 Q. Okay. Do you know if any of them -- and you
3 may not know this -- live within the Middle District
4 of Georgia as the federal court where this case is
5 designated?

6 A. I don't know. I don't know.

7 Q. Okay. Any of them live within a hundred miles
8 of Columbus, Georgia? I guess Atlanta is within a
9 hundred miles.

10 A. I don't know.

11 Q. Okay. Just don't know.

12 All right. When you were at Carmike -- when
13 were you hired into Carmike?

14 A. Can you be more specific?

15 Q. Yes. Were you an owner of Carmike?

16 A. A stockholder?

17 Q. Either an owner or a stockholder. They both
18 have ownership interest, whether or not you were a
19 sole owner or a stockholder.

20 A. Am I --

21 Q. No --

22 A. -- when you say was I --

23 Q. I'm trying to back into when you started work
24 with Carmike.

25 A. Well, are you talking about full time

1 employment?

2 Q. No, sir. When did you first start working
3 with Carmike?

4 A. It was probably in early 2003.

5 Q. And did you join it as an employee?

6 A. I did not.

7 Q. You joined as stockholder?

8 A. I did not.

9 Q. How did you join it?

10 A. As a board of director.

11 Q. Okay. And you were an independent board of
12 director at that point?

13 A. I was.

14 Q. And who were you working for at that time?

15 A. I don't think I was working for anyone. I was
16 retired.

17 Q. What did you retire from?

18 A. The last job I had prior to joining the board
19 of Carmike, which was not a full time position, was
20 as president of the check printing division of the
21 John Harland Company.

22 Q. Okay. And how long were you president of the
23 check printing division of Harland?

24 A. I don't recall.

25 Q. More than 10 years?

1 A. No.

2 Q. More than five?

3 A. I didn't have the title president for more
4 than five, but I was with Harland for more than five.

5 Q. Okay. And who asked you to join the board of
6 directors of Carmike?

7 A. I don't know how to answer who asked me to
8 join. I was contacted by general counsel -- outside
9 counsel for Carmike and asked if I had an interest in
10 discussing possible board membership with them.

11 Q. And who was that outside counsel?

12 A. It was King and Spalding.

13 Q. And who was the lawyer?

14 A. Alan Prince.

15 Q. And that was shortly before 2003?

16 A. It was shortly before I joined the board in
17 2003.

18 Q. Were you elected or selected, if you will?

19 A. I was elected.

20 Q. Okay. And it was a paid position?

21 A. It was -- it did carry compensation, yes.

22 Q. But it was pretty low.

23 A. It depends on what you call pretty low.

24 Q. What was compensation then as board of
25 director?

1 A. I don't remember the amount.

2 Q. How long were you on the board of directors of
3 Carmike?

4 A. Until the company was merged into AMC.

5 Q. And that was in 2016?

6 A. '16. December, I think, 21st.

7 Q. When did you first become a stockholder in
8 Carmike?

9 A. On or about the time I joined the board.

10 Q. Okay. Were you given shares as part of your
11 compensation or did you purchase them?

12 A. Both.

13 Q. Okay. And when did you become an employee of
14 Carmike?

15 A. I'm not sure how to answer that. But the year
16 was 2009.

17 Q. All right. And what happened in 2009 that put
18 you as an employee of Carmike?

19 A. The CEO was ousted by the board and I was
20 recently re-retired and serving as chairman of the
21 board of Carmike. And my fellow directors asked me
22 to oversee it until we could hire a new CEO.

23 Q. And that lasted to 2016?

24 A. Well, sort of.

25 Q. Okay.

1 A. I began overseeing it in the middle of
2 January, 2009. We created a search for a CEO. And
3 by April of 2009, my fellow board members asked me if
4 I would consider doing it on a permanent or full time
5 basis. And in June of 2009, I became president and
6 CEO of Carmike. I resigned as chairman, but remained
7 on the board.

8 Q. Was there -- were you acting president and CEO
9 in the interim or --

10 A. No, I was chairman of the board.

11 Q. And just overseeing it as chairman?

12 A. Yes.

13 Q. Okay. The -- do you recall who your fellow
14 board members were in 2009?

15 A. I recall some of them, for sure.

16 Q. Tell me who you recall.

17 A. Allen Hirschfield.

18 Q. You don't have to wait for me to write. You
19 can keep going.

20 A. Okay. Roland Smith. And those are the only
21 two that I recall from 2009.

22 Q. Do you recall how many there were?

23 A. In 2009?

24 Q. Correct.

25 A. I think there were seven or eight. But, no, I

1 don't recall the exact number.

2 Q. Did you vote to oust the CEO in 2009 as a
3 member of the board?

4 A. I did.

5 Q. And did you vote on --

6 A. Oh, I just remembered one other board member
7 in 2009. It was the former CEO's brother. And I
8 don't recall -- Carl was his name. Carl Patrick.

9 Q. Okay. Did you vote to serve -- for yourself
10 to serve as president and CEO of Carmike?

11 A. I did not.

12 Q. You abstained from that vote?

13 A. I believe I abstained.

14 Q. So when you -- were you then given additional
15 shares of stock as a result of upholding those
16 positions for Carmike?

17 A. Sorry. Which positions?

18 Q. President and CEO.

19 A. Yes.

20 Q. And they were given to you as compensation?

21 A. I believe they were compensation, yes.

22 Q. Were they outright ownership of shares or was
23 it a stock option arrangement?

24 A. Both.

25 Q. Okay.

1 A. But the outright ownership was restricted,
2 time based.

3 Q. So when AMC was ultimately sold -- excuse me
4 -- when AMC came in in 2016, do you know what
5 percentage of stock you owned in Carmike?

6 A. I don't.

7 Q. Were you the majority shareholder?

8 A. No.

9 Q. Who was?

10 A. There was no majority shareholder.

11 Q. Were you one of the largest shareholders?

12 A. No.

13 Q. Okay. And you don't know your percentage?

14 A. No.

15 Q. Was it -- who was the largest shareholder
16 then?

17 A. I don't recall. It was a hedge fund, but I
18 don't recall the name.

19 Q. When AMC took over from Carmike, you sold or
20 redeemed all your shares; is that correct? In
21 Carmike.

22 A. That is correct.

23 Q. Now, you referred to the Carmike merging into
24 AMC. Was the transaction a merger or acquisition of
25 assets or something else?

1 A. I believe it was something else.

2 Q. What do you believe it was?

3 A. I believe they formed -- AMC formed a
4 subsidiary. The subsidiary purchased the stock of
5 Carmike and merged it into that subsidiary.

6 Q. What was the name of the subsidiary?

7 A. I don't recall.

8 Q. Did you sign those documents as president and
9 CEO of Carmike?

10 A. Which documents?

11 Q. The documents that formed the sub when the sub
12 purchased the stock of Carmike.

13 A. I did not. I was not the acquiror.

14 Q. Did you sign any contract to allow for the
15 acquisition by -- of AMC?

16 A. Yes.

17 Q. What documents did you sign?

18 A. I don't recall.

19 Q. Did you retain copies?

20 A. No.

21 Q. Where were the copies left?

22 A. I don't know.

23 Q. Who did you turn them over to?

24 A. I would have signed any documents that I was
25 required to sign in the presence of the general

1 counsel of Carmike.

2 Q. Dan Ellis?

3 A. That would be Dan Ellis.

4 Q. And you left the documents with him?

5 A. Or he took them. Yes, I don't recall the
6 exact mechanism used to do those.

7 Q. But you didn't retain them?

8 A. I did not.

9 Q. Okay. And do you -- and I apologize if I've
10 asked you. Do you recall when AMC formed the
11 subsidiary to purchase Carmike?

12 A. I do not.

13 Q. When did you first hear that that had
14 occurred?

15 A. I actually never heard that it occurred; but
16 it was all part of the plan for the acquisition
17 approved by the shareholders, board of directors, et
18 cetera.

19 Q. Okay. So as a member of the board of
20 directors, you approved the sub of AMC purchasing the
21 shares of Carmike?

22 A. We approved the transaction, yes.

23 Q. Did the board of directors keep minutes?

24 A. Yes.

25 Q. And who was the secretary of the board in

1 2015-2016?

2 A. I believe it was Dan Ellis, general counsel.

3 Q. Where were the minutes kept?

4 A. I don't know.

5 Q. As president and CEO, did you keep minute
6 books or records of Carmike?

7 A. A hard copy, no.

8 Q. You kept an online version?

9 A. We had an online board book that basically had
10 historical records. All board members did.

11 Q. And where was the online board book
12 maintained?

13 A. I don't know.

14 Q. How did you access it?

15 A. On my desk top computer.

16 Q. Okay. And obviously you left your desk top
17 computer with Carmike when you left and it was sold?

18 A. That is correct.

19 Q. Did you sign into a network to obtain access
20 to the online board book? Meaning it wasn't sitting
21 on your laptop by itself. It was on some network
22 that you signed into?

23 A. It was online. The service provider, for lack
24 of a better term, I'm going to use the term cloud --

25 Q. Okay.

1 A. -- it was in a cloud. And I would -- in order
2 to get onto my desk top computer, I had to sign onto
3 our internal network. And then I could gain access
4 to the internet which is where that was.

5 Q. Do you know as part of this transition how the
6 internal network was transitioned to AMC?

7 A. I do not.

8 Q. Could you access this -- since it's in the
9 cloud, could you access the online board book from a
10 home laptop and those kinds of things if you signed
11 in?

12 A. Yes, you could.

13 Q. Do you remember the cloud provider?

14 A. I do not.

15 Q. Do you know if it was a local area network as
16 opposed to out in the cloud, meaning Carmike
17 maintained it?

18 A. Carmike did not maintain the board book online
19 version.

20 Q. Do you know who did?

21 A. I don't.

22 Q. Who would know that?

23 A. Dan Ellis.

24 Q. Okay. Okay. Let's go backwards, Mr. Passman.
25 I'm assuming you graduated from high school?

1 A. I did.

2 Q. Did you go to college?

3 A. I did.

4 Q. Do you have a degree?

5 A. I do.

6 Q. What's your degree?

7 A. It was a Bachelor of Business Administration,
8 Major in Accounting.

9 Q. Where'd you get that from?

10 A. The degree was from University of North
11 Florida.

12 Q. Do you recall the year?

13 A. I recall close to the year.

14 Q. Okay.

15 A. I think it was 1976. It might have been '75.
16 I think it was '76 though.

17 Q. Do you have any other post high school degree?

18 A. Degrees?

19 Q. Correct.

20 A. No.

21 Q. Obviously, you worked on a -- did you work on
22 a second degree?

23 A. Not a degree, no.

24 Q. What college courses did you take or what post
25 secondary work are you referring to?

1 A. Advance management programs at Harvard,
2 Columbia, Northwestern.

3 Q. Do you remember the years you did those?

4 A. I do not.

5 Q. Was it before Carmike?

6 A. Yes.

7 Q. So sometime before 2009?

8 A. Yes.

9 Q. And did you obtain certificates as opposed to
10 degrees from those courses?

11 A. I think -- I know I did from one. I believe I
12 did from all three, but I just don't recall. I
13 completed all of the courses that were in the
14 programs.

15 Q. Okay. Which one do you know you got the
16 certificate from?

17 A. Harvard.

18 Q. And did any of those advance management
19 degrees include training in human resources?

20 MR. GERAKITIS: Object to the form.

21 DEPONENT PASSMAN: None of those were degrees.

22 BY MS. PREBULA:

23 Q. Excuse me. I apologize.

24 Did any of those post graduate courses include
25 any training in human resources?

1 A. Can you be more specific about human
2 resources?

3 Q. In terms of any personnel management,
4 discrimination, personnel policies, et cetera; what's
5 normally covered by a human resources department.

6 A. Well, I believe each one of them had
7 components of management of people, but not -- you
8 mentioned some very specific technical areas of human
9 resources but none of them had those.

10 Q. Did you have any training that would be
11 considered training in human resources and employment
12 policies?

13 A. In the majority of the companies that I have
14 worked for, we have had periodic in-house or led by
15 outside counsel training in various areas of human
16 resource management.

17 Q. But no other outside courses like Harvard,
18 Columbia, or Northwestern?

19 A. No, not specifically for that.

20 Q. Okay. Did you also have in-house training at
21 Carmike on human resources issues?

22 A. Yes.

23 Q. And who led those?

24 A. I believe they were each led by outside
25 counsel, Troutman Sanders.

1 Q. When is the last such course that was offered
2 at Carmike prior to its sale of its stock?

3 A. I don't know.

4 Q. Was it more than a year, more than two years?

5 A. I don't know.

6 Q. Do you recall the most recent course you took
7 as in-house training at Carmike on human resources
8 matters?

9 A. Do I recall..

10 Q. The course itself or the training itself.

11 A. Yes.

12 Q. Okay. And do you recall how close it was or
13 how much before the end of Carmike?

14 A. I don't.

15 Q. Was there any policy as to how often that
16 training would occur at Carmike?

17 A. I don't know.

18 Q. Who would?

19 A. I would assume the human resources department.

20 Q. When the AMC sub acquired Carmike, was there a
21 -- who took the liability for this claim by
22 Ms. Trawick?

23 A. I don't know.

24 Q. Did AMC acquire assets and liabilities or just
25 stock?

1 A. I believe it acquired the stock.

2 Q. Okay. What happened to the liabilities?

3 A. I would assume the liabilities transferred
4 with all assets.

5 Q. So did AMC acquire stock and assets?

6 A. No, I believe it acquired stock. But those
7 documents can be found in the public records. I
8 don't remember the exact form of the transaction.

9 Q. But it's your understanding that the liability
10 for this lawsuit went to AMC?

11 A. I don't know.

12 Q. Was there a reserve set aside for this
13 lawsuit?

14 A. Not that I'm aware of, but I don't know.

15 Q. There was no reserve set aside at Carmike?

16 A. I don't know.

17 Q. Would you have known as president if a reserve
18 was set aside for this lawsuit?

19 A. It depends on how material it would have been.

20 Q. At the time of Ms. Trawick's termination in
21 2015 and the year before, was there any insurance in
22 place for lawsuits such as this for discrimination
23 and retaliation and harassment?

24 A. I don't know.

25 Q. Who carried your insurance, what company?

1 A. I don't know what the insurer was.

2 Q. Did the company have general casualty
3 liability insurance?

4 A. Yes, we did.

5 Q. And you don't know the company that carried
6 it?

7 A. I don't recall. Sorry.

8 Q. Did the company have officer's and director's
9 liability insurance?

10 A. It did.

11 Q. And you don't know the company that carried
12 that.

13 A. No. I believe it was more than one, but
14 I don't recall their names.

15 Q. Did you have an insurance broker that handled
16 your insurance?

17 A. We did.

18 Q. And what was the insurance broker?

19 A. I believe it was Jay Lanier and Smith.

20 Q. Here in Columbus?

21 A. Out of the office here in Columbus, yes.

22 Q. And do you know whether or not you were
23 offered insurance coverage to cover cases such as
24 this for discrimination and harassment and
25 retaliation and the other claims?

1 A. I don't.

2 Q. Do you know -- do you recall that you declined
3 such coverage?

4 A. I don't.

5 Q. Has Carmike ever been charged at the EEOC
6 level with discrimination or harassment before
7 Ms. Trawick's case?

8 A. I don't know.

9 Q. During your tenure as president from 2009 to
10 2016, were there any EEOC charges filed against
11 Carmike?

12 A. I don't know.

13 Q. Who would know that other than the EEOC?

14 A. General counsel.

15 Q. Who is Dan Ellis, correct?

16 A. You said during my tenure?

17 Q. Correct.

18 A. Dan was not there during my entire tenure.

19 Q. Okay.

20 A. So Dan Ellis or his predecessor.

21 Q. And who was that?

22 A. His predecessor?

23 Q. Correct.

24 A. Lee Champion.

25 Q. Is that a L-e-e, a man's name?

1 A. Yes, it is.

2 Q. Do you know where he is now?

3 A. I do not.

4 Q. Do you know where Dan Ellis is now?

5 A. I have a pretty good idea where he is, but I
6 don't know with absolute certainty.

7 Q. Where is your idea that he is?

8 A. Kansas City area.

9 Q. He went with AMC.

10 A. He's with AMC. Last I heard, he's with AMC.

11 Q. Is he employed by AMC holding company or the
12 sub that referenced earlier?

13 A. I don't know.

14 Q. When is the last time you talked to Dan Ellis?

15 A. Probably December of 2016.

16 Q. And did you discuss this lawsuit?

17 A. I did not. The last time I talked to him, I
18 did not discuss this lawsuit.

19 Q. Okay. Going back to the question of whether a
20 reserve or set-aside was established for this
21 lawsuit, if there was one set aside at Carmike, would
22 you know about it?

23 A. Not necessarily.

24 Q. Why?

25 A. Because many of the accounting reserves that

1 were set aside were done at the CFO or below level
2 that would not have -- would not have had need to
3 come to my office for approval.

4 Q. When the sale occurred in 2016, were there any
5 other lawsuits other than Ms. Trawick's lawsuit
6 pending against Carmike?

7 A. I don't remember.

8 Q. Okay. What were your duties as president and
9 CEO?

10 A. Generally, my duties were to guide and lead
11 the company in its strategic execution as directed by
12 the board of directors.

13 Q. As part of that function, did anyone report to
14 you on pending litigation?

15 A. Yes.

16 Q. Who?

17 A. Dan Ellis.

18 Q. Okay. Was this lawsuit reported to you when
19 it was filed?

20 A. I believe it was.

21 Q. When is the first time you heard about this
22 lawsuit?

23 A. I don't recall.

24 Q. Before the sale?

25 A. Yes.

1 Q. Was Carmike a publicly held company?

2 A. Yes.

3 Q. Were lawsuits not required to be included in
4 your accounting reports?

5 A. It depends on the lawsuits.

6 Q. Did you review the accounting reports and
7 annual reports before they were submitted or
8 published?

9 A. Yes.

10 Q. Are you aware of prior lawsuits against
11 Carmike for sexual harassment and discrimination
12 prior to when you were president?

13 A. No.

14 Q. Have you ever responded to an EEOC charge
15 alleging sexual harassment and discrimination against
16 Carmike?

17 A. Not that I recall.

18 Q. Was there a break room or gathering room at
19 Carmike for employees?

20 A. Would you explain what you mean by gathering
21 room?

22 Q. I think -- I can't even imagine that you don't
23 understand that. A place where employees could get
24 together when they're not working.

25 A. Well, you told me to make sure that if I

1 wasn't clear on a question, to let you know. I'm not
2 clear on what a gathering room is.

3 Q. Was there a break room?

4 A. Yes.

5 Q. Was there a room set aside for employees to
6 get together to communicate or meet other than the
7 break room?

8 A. Yes.

9 Q. Okay. So where was the break room?

10 A. It was on the second floor of our headquarter
11 building.

12 Q. Were there bulletin boards in the room?

13 A. I believe so.

14 Q. Were anti-discrimination or harassment
15 policies posted on those boards?

16 A. I don't recall.

17 Q. Where was the gathering room or the communal
18 room we discussed earlier?

19 A. Well, again, I'm not real sure what you mean
20 by gathering room. Let me just explain what rooms we
21 had where --

22 Q. Sure.

23 A. -- more than one employee would meet that
24 wasn't in their own office.

25 Q. I'm talking about a room -- not a conference

1 room like where we're sitting. Not for official
2 business. But some other room other than the break
3 room where employees could go on breaks, et cetera.

4 A. There was a break room as well on the fourth
5 floor --

6 Q. Okay.

7 A. -- but...

8 Q. But?

9 A. I'm not sure it was -- it's going to meet your
10 definition of a gathering room. There was a coffee
11 pot in there. There was a television running Fox or
12 CNN. And when we were celebrating someone's
13 birthday, they would often serve the cake in that
14 room. But it was pretty rare that you would see
15 employees in there doing non-work.

16 Q. Was there a bulletin board in that room?

17 A. I don't know.

18 Q. Was there a harassment or discrimination
19 policy posted in that room?

20 A. I don't know.

21 Q. Was there a anti-discrimination or harassment
22 policy posted anywhere at the company?

23 A. I don't know.

24 Q. Did you ever see one posted anywhere at the
25 company?

1 A. I don't recall seeing one.

2 Q. And we are talking about the corporate
3 offices, correct; because that's where your office
4 was.

5 A. That's what I was speaking of, yes. The
6 corporate office.

7 Q. I just wanted to make sure. I wasn't trying
8 to confuse you that we were talking about any
9 theater.

10 A. Sure.

11 Q. Okay. So when you were president and CEO, I'm
12 assuming the employees that reported to you changed
13 over time; is that fair? Some people came and some
14 people left.

15 A. Well, I don't know if it's fair; but that is
16 true.

17 Q. I mean it's a fair statement that the
18 employees changed over time.

19 A. The employees did change over time.

20 Q. So as president and CEO, can you tell me what
21 jobs reported to you? For example, did district
22 managers report directly to you?

23 A. They did not.

24 Q. So what jobs -- what persons and jobs reported
25 directly to you?

1 A. At which -- at what point in time?

2 Q. Did it change over time?

3 A. It did.

4 Q. Okay. So when you started in 2009, what jobs
5 reported to you?

6 A. When I became president and CEO in 2009 as
7 opposed to chairman...

8 Q. Correct.

9 A. Yes. When I became president and CEO in 2009,
10 the COO reported to me; the CFO reported to me; and
11 the general counsel reported to me.

12 Q. Okay. And how did that change over time?

13 A. In 2016, the CMO reported to me as well as
14 those three positions. And in 2000 -- I'm sorry, I
15 don't recall whether it was 2014, but I think it was,
16 the president of alternative programming reported to
17 me.

18 Q. Okay. So from 2009 to 2014, it was just those
19 three: COO, CFO, and general counsel?

20 A. I believe that's correct.

21 Q. And did you have an administrative assistant
22 who reported to you?

23 A. Yes, I did. Sorry.

24 Q. And she was called administrative assistant?

25 A. I don't know -- I don't recall what her title

1 was during that period.

2 Q. Do you recall what her title was in 2015 when
3 Ms. Trawick was terminated?

4 A. I don't recall with absolute clarity what her
5 title was, no.

6 Q. Okay. Did you have the same administrative
7 assistant or secretary or whatever her title was from
8 2009 to 2015 when Ms. Trawick was terminated?

9 A. At some point in 2009, she became my
10 administrative assistant. The former CEO's
11 administrative assistant was my administrative
12 assistant for a period of time in 2009.

13 Q. Okay. And so your administrative assistant
14 beginning sometime in 2009 was Lisa De La Cruz?

15 A. That's correct.

16 Q. And she remained your administrative assistant
17 until AMC bought the company?

18 A. That's true.

19 Q. Where is Lisa De La Cruz now; do you know?

20 A. I do not.

21 Q. Did you prepare for this deposition?

22 A. I'm not sure what -- what you mean? Did I
23 talk --

24 Q. Did you take any action to prepare for this
25 deposition?

1 A. I thought about it a lot.

2 Q. Okay. Anything else?

3 A. I talked to my attorney about it.

4 Q. Okay. Is it your testimony that -- and who is
5 your attorney?

6 A. Troutman Sanders.

7 Q. Okay. Did you personally hire Troutman
8 Sanders?

9 A. What do you mean personally hire? I was an
10 officer of the company and as such, the company hired
11 Troutman Sanders.

12 Q. Okay. That's my question. You didn't hire
13 Troutman Sanders to represent you individually. The
14 company is providing you with counsel, correct?

15 A. I'm not sure what the technical --

16 Q. Did you sign an individual contract with
17 Troutman Sanders and pay him a retainer?

18 A. I'm not paying him individually, no.

19 Q. So the company is providing you counsel as an
20 officer of the company.

21 A. That's correct.

22 Q. And do you know if AMC is paying for that or
23 Carmike?

24 A. There is no Carmike.

25 Q. And no reserve funds set to pay fees?

1 A. Not that I'm aware of, but I don't know.

2 Q. All right. Other than Mr. Gerakitis, did --
3 and I assume that's the counsel you talked to because
4 you nodded at him; is that fair?

5 A. Yes, that is correct.

6 Q. Okay. Other than Mr. Gerakitis, have you
7 talked to anyone about this deposition or the
8 substance of your testimony?

9 A. No.

10 Q. You hesitated. Have you talked to someone
11 about the deposition itself?

12 A. Well, we have counsel here as well. And the
13 gentleman I met for the first time yesterday, but I
14 don't remember him attending any discussions that
15 Richard and I had about this deposition. But I do
16 know he represents us.

17 Q. And who is that?

18 A. Thomas. I don't know what his last name is.

19 Q. Gristina?

20 A. I don't know.

21 Q. Here at Page Scrantom?

22 A. Yes.

23 MR. GERAKITIS: Scrantom.

24 MS. PREBULA: I said it. I said it that way.

25 MR. GERAKITIS: I thought you said Scranthem.

1 MS. PREBULA: No, I didn't. But thank you for
2 the correction.

3 MR. GERAKITIS: Sorry. I didn't want you to
4 make a mistake in case you didn't.

5 BY MS. PREBULA:

6 Q. It's your understanding Mr. Gristina
7 represents Carmike?

8 A. I don't have an understanding. I met him for
9 the first time yesterday.

10 Q. Well, when you said we have a lawyer here who
11 represents us, who is us?

12 A. I believe -- I believe that he is that -- that
13 person. But, again, I didn't hire him. I have not
14 consulted with him. He came in yesterday and was
15 talking about subpoenas in this case; but we did not
16 talk about my deposition.

17 Q. Okay. Here's why that's important. If you
18 talked to Mr. Gristina and he does not represent
19 Carmike, then what you discussed with him is not
20 privileged.

21 A. Okay. I did not discuss anything with him. I
22 was in the room when he came in, but I did not
23 discuss anything with him at all.

24 Q. Okay. And is it your understanding that he
25 represents Carmike as well?

1 A. It is not my understanding.

2 Q. Okay. You said we have another lawyer here
3 and his name is Thomas. Who is we? Carmike?

4 A. Richard and I -- he came into the room
5 yesterday.

6 Q. But that's not what you said, Mr. Passman.
7 You said: We have another lawyer here. So I'm
8 asking you who the "we" is. Carmike?

9 A. Carmike does not exist. I stand corrected.

10 Q. Well, who is the "we"?

11 A. What I was trying to say is Richard and I were
12 talking to another -- or Richard was talking to
13 another attorney from Page that came into the room.
14 I assumed -- assumed -- I don't assume today, but I
15 assumed at the time that he had something to do with
16 this case.

17 Q. And you assumed he represented Carmike?

18 A. I did not assume he represented Carmike
19 because Carmike does not exist.

20 Q. Then why did you say that "we had another
21 lawyer here"?

22 A. Let me go back and try to restate it for you.
23 Thomas introduced himself. Came into the room. He
24 and Richard were talking about subpoenas. But I had
25 no words with him, other than to introduce myself and

1 he introduced himself to me. I assumed that he had
2 something to do with this case against Carmike and
3 then successor AMC.

4 Q. That doesn't answer the question I asked. So
5 why did you say "we", and who is the "we"?

6 A. I don't know why I said we.

7 Q. Okay. So other than Mr. Gerakitis, did you
8 talk to anyone else to prepare for this deposition
9 today?

10 A. Did not.

11 Q. Have you talked to anyone else about this
12 lawsuit other than Mr. Gerakitis?

13 A. Well, the "about this lawsuit", my wife knows
14 I'm here giving this deposition. She knows there's a
15 lawsuit against the company. And I haven't talked to
16 her about the particulars of it. But I don't know if
17 that constitutes talking about it or not. But my
18 wife.

19 Q. Anyone else?

20 A. No.

21 Q. Have you reached out to any former employees
22 of Carmike to talk about this lawsuit since it was
23 filed?

24 A. I have not.

25 Q. Have you talked to anyone at AMC about this

1 lawsuit since it was filed?

2 A. I have not.

3 Q. Okay. Did you review any documents in
4 preparation for the deposition?

5 A. Well, I'm not sure what I can say about
6 talking to counsel about the documents that have been
7 produced previously. I have no documents to review
8 or to have reviewed, but I've talked to my counsel.

9 Q. I did not ask you what you discussed with your
10 counsel. Have you reviewed any documents in
11 preparation of this deposition?

12 A. I have gone over documents with counsel. But
13 I have not, on my own, reviewed any documents.

14 Q. So what documents have you reviewed in
15 preparation for the deposition?

16 A. I don't recall what they would be titled or
17 how to describe them.

18 Q. You don't recall a single document you looked
19 at for this deposition?

20 A. Well, I looked at a lot of papers and
21 screenshots.

22 Q. Mr. Passman, are you taking any medication
23 that would affect your memory today?

24 A. No.

25 Q. Have you taken any medication that would have

1 affected your memory within the last two years?

2 A. I don't believe so.

3 Q. Have you taken any medication that would
4 affect your ability to tell the truth today?

5 A. No.

6 Q. Have you been diagnosed with any condition or
7 illness which would affect your memory?

8 A. No.

9 Q. Have you taken any medication this morning?

10 A. No.

11 Q. Any medication within the last 48 hours?

12 A. No, other than vitamins.

13 MR. GERAKITIS: That's not medication.

14 BY MS. PREBULA:

15 Q. Have you had any alcohol to drink within the
16 last 48 hours?

17 A. Yes.

18 Q. When is the last alcohol you had?

19 A. Yesterday evening.

20 Q. And what did you drink?

21 A. A scotch.

22 Q. One scotch?

23 A. One scotch?

24 Q. Any alcohol issues that would affect your
25 memory today?

1 A. No.

2 Q. Is there anything else that would affect your
3 memory today, any other events, occurrences or
4 conditions?

5 A. Not that I recall or would be aware of, no.

6 Q. How old are you?

7 A. 65.

8 Q. Have you had any recent hospitalizations?

9 A. Out-patient, not overnight stay.

10 Q. Okay. And what were your recent
11 hospitalizations --

12 A. Kidney stone.

13 Q. -- outpatient?

14 A. Kidney stone.

15 Q. I'm sorry.

16 A. Thank you.

17 Q. And when was that?

18 A. The last was -- the most recent was last
19 month.

20 Q. Okay. And --

21 A. I'm sorry. We're in October. It would have
22 been in August.

23 Q. And I presume that you were not -- you did not
24 get a general anesthesia for that treatment?

25 A. I think I did.

1 Q. You did. Okay. Have you had any difficulties
2 with anesthesia or with it having long term effects
3 affecting your memory?

4 A. Not that I'm aware of.

5 Q. Okay. Did you hire Crystal Trawick to work
6 for Carmike?

7 A. I did not.

8 Q. Who did?

9 A. I don't know.

10 Q. Did you know Crystal before she began working
11 at Carmike?

12 A. I did not.

13 Q. Did you know her husband's family before she
14 began working at Carmike?

15 A. No.

16 Q. Do you know the first position she was hired
17 into?

18 A. I do not.

19 Q. When did you first become aware that
20 Ms. Trawick was an employee?

21 A. I think it would have been in January of 2009.

22 Q. And what was that circumstances?

23 A. We had just terminated the CEO and we had an
24 all employee meeting at a local theater. And I
25 informed the employees that the CEO was no longer

1 there and that we were establishing an office of the
2 chairman and how I saw that as working.

3 And when that meeting was over, Crystal along
4 with several other employees introduced herself to me
5 as an employee of Carmike.

6 Q. When you say a meeting with all employees, was
7 that all employees of Carmike?

8 A. Corporate. Corporate.

9 Q. Corporate.

10 A. We then had telephone conferences with all
11 theater managers and field employees.

12 Q. Is that what you call theater employees, field
13 employees?

14 A. Well, I just want to make sure that -- some of
15 the theaters -- all of the theater managers would
16 have been included in that. We had district offices
17 that were remote from corporate and those were not,
18 quote, theater employees. They would have been
19 included in that as well.

20 Q. And you refer to them as field employees?

21 A. Yeah. People out in the field, away from
22 corporate.

23 Q. So field employees refers to everybody away
24 from corporate?

25 A. To me, it does.

1 Q. Okay.

2 A. That was not a Carmike term.

3 Q. Understood. Did -- how many employees were at
4 that meeting in 2009?

5 A. I don't know.

6 Q. Okay. Carmike was a smaller company then than
7 it was when it was sold, fair?

8 A. You know, I'm not a hundred percent sure
9 whether it was smaller at the time in 2009 than when
10 it was sold. Carmike has had ups and downs. We
11 closed a lot of theaters between 2009 and 2011, and
12 then we started growing the company back. So I'm not
13 certain.

14 Q. Do you remember how many people were in that
15 corporate office in 2009 when you took over as
16 president and CEO?

17 A. I don't. It was in excess of a hundred, but I
18 couldn't tell you how many.

19 Q. Including all the district offices, how many
20 corporate employees were there when Ms. Trawick was
21 fired in November of 2015?

22 A. I don't know.

23 Q. More than a hundred?

24 A. I would assume so, but I don't know.

25 Q. How many over -- how many employees overall

1 did Carmike have in November of 2015?

2 A. Company wide?

3 Q. Correct.

4 A. Part-time and full time?

5 Q. Correct.

6 A. Including part-time?

7 Q. Correct.

8 A. That probably would be in excess of 12,000.

9 Q. Okay. And do you know how many full time
10 employees it had in November of 2015?

11 A. I don't.

12 Q. It's more than 6,000 though, wasn't it?

13 A. No, ma'am.

14 Q. Okay. How many employees --

15 A. It would have been less than 1,000.

16 Q. More than 500?

17 A. I don't know.

18 Q. Who would know that?

19 A. HR.

20 Q. Okay. Are you aware that Carmike has not
21 disputed that there were more than 500 employees at
22 the time this happened?

23 A. I'm not aware of that.

24 Q. Okay. Have you reviewed the complaint in this
25 case?

1 A. The one filed in court?

2 Q. Correct.

3 A. Yes, ma'am.

4 Q. Okay. When did you review the complaint?

5 A. About the time it was filed, I got a copy of
6 it or we -- our executive team at one of our
7 executive team meetings was briefed on it by our
8 general counsel and --

9 Q. Did you read it?

10 A. -- I've seen it. I don't recall if I read the
11 entire complaint or whether I read parts of it that
12 were pointed out to me. And then since then in
13 discussions with my counsel, I have seen parts of the
14 complaint.

15 Q. Did you see the EEOC charge when it was filed?

16 A. I've seen parts of it.

17 Q. Sorry. I'm losing ink here.

18 A. There's several pens behind you.

19 Q. Oh, no. I prefer mine, but we all have our
20 own little ones that we like.

21 Did the vice presidents ever report to you as
22 president and CEO?

23 A. Any vice president?

24 Q. Correct.

25 A. Is that what you mean? Not that I recall.

1 Q. And district managers did not report to you as
2 president and CEO?

3 A. That's correct.

4 Q. Did you have anything to do with moving
5 Ms. Trawick into the marketing department?

6 A. I believe I approved it.

7 Q. Why would you have had to approve Ms. Trawick
8 moving into the marketing department?

9 A. I wouldn't have to.

10 Q. Then why did you approve it?

11 A. We had regularly scheduled executive team
12 meetings, my direct reports and myself; and we would
13 talk about things going on during the day or during
14 the week. We generally met weekly.

15 And as I recall, Fred brought it up at an
16 executive team meeting that it was being done and the
17 rest of the executive team all concurred that it
18 sounded like the right thing to do. And I personally
19 thought it was the right thing to do.

20 Q. And when you say Fred, you mean Fred
21 Vanderway?

22 A. Fred Vanderway, COO. Marketing and film
23 departments both reported to Fred. This was a
24 transfer between two of those departments.

25 Q. Why would something at that level have come to

1 you as president and CEO for approval?

2 A. It didn't come to me for approval.

3 Q. Mr. Passmore, you just said you approved it.

4 A. I did. I did approve it. I approved of it
5 and the rest of the executive team did as well. But
6 it didn't require our approval, but we did approve
7 it.

8 Q. Did you similarly approve making Shannon
9 Sailors a director?

10 A. No, ma'am.

11 Q. Okay. So why would a lower position be
12 approved by you but moving Sailors in as a director
13 not be approved by you?

14 A. I think Sailors was a director of advertising
15 when I came into the company.

16 Q. Okay. Respectfully, that does not answer my
17 question.

18 A. It wouldn't. It wouldn't. And it didn't.

19 Q. Do you remember the year that Ms. Trawick was
20 moved into marketing?

21 A. I don't.

22 Q. Were there any other job promotions or hirings
23 that you had to approve?

24 A. We had a general operating policy between
25 myself and my direct reports that any of their direct

1 reports, hire, fire, promotion would be approved by
2 someone other than them. It, in some cases, could be
3 the CFO, CLO or myself. But no one could have sole
4 authority for a direct report of themselves. So,
5 yes, there were several during my tenure that I would
6 have had to approve.

7 Q. Okay. This is the first time you mentioned
8 CLO. Who is the CLO?

9 A. Chief legal officer of the company. That
10 would be Dan Ellis.

11 Q. Okay. So you were calling him -- instead of
12 the general counsel, you were calling him CLO?

13 A. Yeah.

14 Q. And was that his title?

15 A. I don't recall his title.

16 Q. It was either general counsel or CLO?

17 A. It would have been. I refer to him as -- sea
18 level positions to me were what I generally referred
19 to them as. I can't tell you whether they were
20 senior vice presidents, executive vice presidents or
21 vice presidents. They were chief -- he was the chief
22 legal officer of the company.

23 Q. Okay. Was this general operating policy in
24 writing?

25 A. No, it was not. At least I don't believe it

1 was.

2 Q. So it was an informal policy?

3 A. I would say it was formal.

4 Q. But not in writing?

5 A. But not in writing.

6 Q. Were there any other general operating
7 policies that were formal but not in writing that
8 affected personnel?

9 A. There may have been, but not that I recall.

10 Q. You said you had regularly scheduled executive
11 team meetings. When were those -- what was the
12 regular schedule?

13 A. They were most often on Mondays.

14 Q. Every week?

15 A. Every week, Mondays. There were clearly
16 exceptions: Travel, events, any number of things.
17 But we had a standing meeting on Mondays.

18 Q. Okay. If I tell you that Ms. Trawick was
19 moved into marketing at the end of 2012, does that
20 sound right to you?

21 A. I don't know if it's right or not.

22 Q. No way for you to recall?

23 A. I have no reason to dispute it.

24 Q. Did you approve Crystal Trawick moving into
25 the marketing department in writing?

1 A. I did not. Again, I tried to describe. It
2 was not even a required approval. It was brought up
3 and mentioned.

4 Q. Under your general operating policy that your
5 direct reports, which were all sea level, right?
6 Except for your administrative assistant.

7 A. That's right.

8 Q. And that all sea level direct reports had to
9 be approved by another executive. Were those
10 approvals in writing?

11 A. I don't know, but I don't think so. It wasn't
12 required that they be approved in writing. Changes
13 in pay were all in writing.

14 Q. Did you have to approve those for every
15 employee?

16 A. For every employee of the company? No, ma'am.

17 Q. Every corporate employee. Obviously I'm not
18 talking about the people way out in the field.

19 A. No, not for every corporate employee.

20 Q. What level did you have to approval salary
21 changes --

22 A. Pay changes?

23 Q. -- for?

24 A. The aforementioned direct reports of direct
25 reports and --

1 Q. Wait a minute. Let me make sure I understand
2 that. The sea level people and the direct reports to
3 the sea level people?

4 A. That's correct.

5 Q. Okay.

6 A. And any pay increase over a percentage
7 threshold that we had set.

8 Q. And what was that threshold?

9 A. I believe it was four percent, but I don't
10 recall specifically. It may have been slightly
11 lower.

12 Q. So from 2009 to 2015 -- let me back up because
13 Ms. Trawick was not at that level.

14 From 2012 to the end of 2015, did you approve
15 Crystal Trawick's pay increases?

16 A. I don't recall. But if she received pay
17 increases that were above the threshold, I would have
18 -- they would have had to come to me.

19 Q. Well, I thought you said you approved pay
20 changes for direct reports to sea level people.
21 Didn't she directly report to Mr. Van Noy?

22 MR. GERAKITIS: Object to the form.

23 DEPONENT PASSMAN: Not in 2012, I don't think
24 she did.

25 BY MS. PREBULA:

1 Q. Okay. And Mr. Van Noy was -- what title did
2 he hold?

3 A. Chief operating officer.

4 Q. And he was COO from the time you started in
5 2009?

6 A. If not, immediately after. But I believe his
7 title at that time was chief operating officer as
8 well. I just don't recall.

9 Q. When Ms. Trawick moved into marketing, she
10 reported directly to Terrell Mayton, right?

11 A. I believe that's correct.

12 Q. And he was the director of marketing?

13 A. I believe that's correct.

14 Q. Okay.

15 A. I don't recall his title. I'm sorry.

16 Q. Once he was terminated in the summer, early
17 fall of 2013, Ms. Trawick then directly reported to
18 Mr. Van Noy, right?

19 A. I believe that's correct.

20 Q. Did you approve Crystal Trawick's pay changes
21 from summer or early fall 2013 to the time of her
22 termination?

23 A. I believe I would have.

24 Q. Would you have signed the forms?

25 A. I believe I would have.

1 Q. Would the same be true for Shannon Sailors,
2 that you would have approved pay increases for him?

3 A. During that period of time?

4 Q. Correct.

5 A. I believe I would have.

6 Q. And you believe you would have signed the
7 forms?

8 A. I believe I would have.

9 Q. And I'm presuming you would have approved
10 Crystal Dela -- not Crystal --

11 A. Lisa.

12 Q. -- Lisa De La Cruz's pay increases since she
13 reported directly to you?

14 A. Yeah. She also reported directly to the CFO.
15 And generally he would recommend the pay increase.
16 He and I would discuss it and arrive at it.

17 Q. And who was the CFO between 2013 and end of
18 2015?

19 A. Richard Hare.

20 Q. H-a-r-e?

21 A. Right.

22 Q. Okay. When you approved Crystal moving into
23 the marketing department, what was your understanding
24 of what her job responsibilities were going to be?

25 A. I don't have specific memory of it. But as I

1 recall it, they were making a spot in the marketing
2 department to give her an opportunity to learn and
3 grow in marketing skills.

4 Q. Do you remember any of her job
5 responsibilities?

6 A. I believe it was going to be on a project
7 basis.

8 Q. What does that mean?

9 A. It means specific marketing projects would be
10 assigned to her from Terrell at the time, and she
11 would handle those.

12 Q. Do you have to approve the projects that were
13 given to her?

14 A. I did not.

15 Q. I'm looking to see if we marked this document
16 as an exhibit already. Did you have an understanding
17 of what the projects were that were going to be given
18 to Ms. Trawick?

19 A. I do not.

20 Q. None?

21 A. I don't recall any off the top of my head.

22 Q. Let me show you what has been marked as
23 Plaintiff's Exhibit 44. Have you seen this document
24 before?

25 A. Not that I recall.

1 Q. Do you recall reviewing this document in
2 preparation for this deposition?

3 A. I do not.

4 Q. Does this refresh your recollection at all as
5 to the responsibilities of Ms. Trawick when she moved
6 into marketing?

7 A. It does not.

8 Q. When I asked if you had seen it before -- and
9 perhaps I misunderstood you. You said you don't
10 recall. Does that mean you don't recall one way or
11 the other, or you don't recall seeing the document?

12 A. I don't recall seeing the document.

13 Q. Okay. Did you approve Ms. Trawick moving into
14 marketing without a title?

15 A. I don't recall a title being discussed.

16 Q. Ever, or just at the time she moved into --

17 A. At the time she moved in.

18 Q. Now, this particular document, Plaintiff's 44,
19 was prepared after she was given the title marketing
20 project manager.

21 MR. GERAKITIS: Object.

22 BY MS. PREBULA:

23 Q. You see that on there.

24 MR. GERAKITIS: Object.

25 BY MS. PREBULA:

1 Q. It says marketing projects manager.

2 MR. GERAKITIS: Object to form.

3 DEPONENT PASSMAN: I do see that.

4 BY MS. PREBULA:

5 Q. Okay. Do you know whether or not her duties
6 were different when she first moved into marketing as
7 opposed to when she became marketing projects
8 manager?

9 A. I don't know because I don't know what duties
10 she was given when she moved into the marketing
11 department.

12 Q. If you approved that transfer, how can you not
13 know what duties she was given?

14 A. In a -- in an environment such as Carmike, I
15 did not know the specific duties of many of our
16 corporate employees.

17 Q. But you approved this one.

18 A. Approved. As I said, it was mentioned. Fred
19 brought it up at an executive team meeting that we
20 were going to -- or he was going to or the company
21 was going to transfer her from film into marketing
22 and marketing was making a position for her. And we
23 discussed it. We all agreed it sounded good. We
24 individually had different feelings about Crystal's
25 strengths and weaknesses, and marketing seemed like a

1 good spot for her to go to.

2 Q. And just because there's more than one Fred,
3 you're talking about Fred Van Noy.

4 A. That's correct.

5 Q. So what was your understanding she was going
6 to do when she was moved from film to marketing?

7 A. That marketing -- that Terrell was making a
8 spot for her and would find discreet projects for her
9 to do.

10 Q. But it's your testimony you had no idea what
11 those projects were going to be?

12 A. It is my testimony that I had no idea at that
13 time what those projects might be. We had many needs
14 in marketing. I did not get into the weeds over what
15 projects would be assigned to what employees in the
16 marketing department.

17 Q. Well, did you approve anybody else being moved
18 into marketing?

19 A. Transfers from other departments?

20 Q. Yes, sir.

21 A. I don't recall any other transfers from other
22 departments into --

23 Q. Did you --

24 A. -- marketing.

25 Q. I'm sorry. Didn't mean to talk over you.

1 Did you approve any hirings into the marketing
2 department?

3 A. Indirectly.

4 Q. Did you approve whether or not Ms. Trawick
5 would get a raise from being moved from film to
6 marketing?

7 A. I don't recall compensation being a part of
8 the discussion on moving from film to marketing.

9 Q. Do you know that she did not get a raise when
10 she moved into marketing?

11 A. I don't know that. That wouldn't surprise me.

12 Q. Why?

13 A. Because I believe she was a film buyer and --
14 and marketing was making a spot for her, which would
15 not necessarily be a more senior level role. It
16 would be, I would think, either a lateral or maybe
17 even a lesser role initially.

18 Q. Did you tell her that?

19 A. I don't recall telling her that, no.

20 Q. Did anyone tell her, to your knowledge, that
21 this was going to be a demotion or a lateral move?

22 A. I have no idea.

23 Q. So to your knowledge, no one told her that?

24 A. To my knowledge, no one told her that.

25 Q. When she moved into marketing, would you have

1 had to approve what her salary was going into the
2 marketing department in 2012?

3 A. I would not.

4 Q. Do you know why she was not given a title in
5 2012 when they moved her into marketing?

6 A. I do not.

7 Q. Okay. Do you recognize on Plaintiff's Exhibit
8 44 any responsibilities that she had prior to
9 becoming marketing projects manager?

10 A. I'm sorry, I don't.

11 Q. Did you have a discussion with Ms. Trawick in
12 April of 2013 that it was -- that she wanted a title
13 and she wanted a pay raise?

14 A. I don't recall that specifically.

15 Q. Do you remember how long after it was you
16 discussed moving Ms. Trawick into marketing that she
17 actually moved into marketing?

18 A. No, I don't.

19 Q. Do you recall that it was after October 2012?

20 A. I don't.

21 Q. Somewhere in that time frame?

22 A. I don't recall.

23 Q. Okay. Did you keep a daily diary?

24 A. No, I did not.

25 Q. Did you keep a calendar?

1 A. Yes.

2 Q. Where was your calendar kept?

3 A. On Microsoft Outlook.

4 Q. And how was that maintained?

5 A. Either I or my assistant would book
6 appointments, travel, that kind of thing. I believe
7 a few other people had access to it, but I don't know
8 if they had access and write capabilities to it.

9 Q. That was my next question. Who were the other
10 people who had access to it?

11 A. I believe that each person on the executive
12 team could see my calendar, but I don't know that for
13 a fact.

14 Q. And when you say executive team, who are you
15 defining as the executive team?

16 A. It would be the chief financial officer who my
17 assistant also reported to, it would be the chief
18 operating officer, and the chief legal officer. And
19 later, the chief marketing officer and the president
20 of alternative programming. And I think I said my
21 assistant, but I'm not sure.

22 Q. Right. But I was asking -- you didn't
23 consider your assistant to be part of the executive
24 team, did you?

25 A. No, I did not.

1 Q. Okay. When you use the term executive team,
2 does that include any vice presidents?

3 A. I believe all of them were vice presidents,
4 either senior vice presidents or vice presidents
5 other than my assistant.

6 Q. What happened to the calendar, the Outlook
7 calendar?

8 A. I don't understand the question. What happens
9 to it?

10 Q. No, what happened to it? When the company was
11 sold, what happened to it?

12 A. You'll have to ask the company.

13 Q. Did you just literally get up and walk out of
14 your office and leave everything there?

15 A. No, not everything. I had personal items that
16 we boxed up that I took home. They included trophies
17 and awards and that kind of stuff. I had some
18 personal files. I got -- I basically kept country
19 club statements and that kind of thing, and most of
20 those I put into a trash bin in my office. And I
21 left my desk top computer as it was and literally did
22 get up and walk out. I took a laptop computer with
23 me. I took an Ipad with me. I had a printer at home
24 that I was able to retain.

25 Q. And were the laptop, Ipad and home printer

1 purchased by Carmike?

2 A. They were.

3 Q. Have you made any changes to the laptop, Ipad
4 and home printer?

5 A. Since -- help me.

6 Q. Since you left.

7 A. You mean changes, have I used them?

8 Q. No.

9 A. I use them constantly.

10 Q. Okay. That isn't what I meant. Have you
11 deleted any documents?

12 A. No.

13 Q. Have you --

14 A. They were -- all of -- the printer had no
15 documents. The laptop and --

16 Q. The printer might have documents in the
17 memory.

18 A. Okay. It was -- nothing was done to the
19 printer. It was at home and I rarely used it.

20 Q. Okay.

21 A. But nothing was done to that. But the laptop
22 and the Ipad were given or taken by the IT department
23 on the day of my departure. They were returned to
24 me. I think they were given a day or two before that
25 and returned me completely wiped clean and no

1 software, no nothing on them. No Microsoft anything,
2 no emails, nothing. And I was given those. I took
3 them home and set up my email and all that kind of
4 stuff.

5 Q. Has Carmike demanded that you return the
6 laptop, Ipad and home printer?

7 A. Carmike did not exist when I took those home.
8 It was AMC that permitted me to take them.

9 Q. And they haven't asked you --

10 A. And they have not asked for them back, no.

11 Q. When the lawsuit was filed in December of 2016
12 --

13 A. I'm sorry. When?

14 Q. December of 2016.

15 A. Uh-huh. (indicating in the affirmative).

16 Q. -- had AMC already acquired Carmike?

17 A. I think the lawsuit was filed the week before,
18 but I'm not a hundred percent sure.

19 Q. But you saw the lawsuit before the acquisition
20 was completed or the sale was completed?

21 A. I was made aware of it and I believe I saw
22 either excerpts or pieces of it, but I don't know
23 whether I saw the entire suit.

24 Q. Before --

25 A. Before closing, yes.

1 Q. So you saw -- you knew the lawsuit had been
2 filed before AMC closed on the sale of Carmike?

3 A. That's correct.

4 Q. All right. And you think you saw parts of it
5 at least?

6 A. Yes.

7 Q. When you were notified of the lawsuit, did you
8 issue any litigation hold to preserve documents
9 related to this lawsuit?

10 A. Did I personally or did the company? I'm not
11 sure what you're asking.

12 Q. Did you, as president and CEO of the company,
13 issue a litigation hold to preserve documents?

14 A. I did not personally issue a hold.

15 Q. Did anyone at Carmike issue a litigation hold?

16 A. Yes.

17 Q. Who did that?

18 A. Dan Ellis.

19 Q. Where were those documents preserved?

20 A. I don't know.

21 Q. Was the wiping of your Ipad and laptop
22 consistent with a litigation hold?

23 A. I don't know, but I assume it was.

24 Q. Did you email Crystal Trawick during her
25 employment at Carmike?

1 A. At any time?

2 Q. Yes.

3 A. Yes.

4 Q. Did you preserve those emails?

5 A. I did not erase those emails.

6 Q. Did you preserve them?

7 A. I -- I'm not sure.

8 Q. Okay. You didn't preserve them on a flash
9 drive or a disk or anywhere?

10 A. No. No, I did not.

11 Q. Okay. What was the litigation hold that was
12 issued?

13 A. I don't recall. You'll need to check that
14 with the company.

15 Q. What was your understanding of the hold?

16 A. That anything having to do with Crystal
17 Trawick was to be retained.

18 Q. And who was that sent to?

19 A. I believe it was sent to all corporate
20 employees, but I don't know.

21 Q. In writing?

22 A. Yes.

23 Q. In what format?

24 A. In writing.

25 Q. Was it an email, a letter, something you

1 passed out?

2 A. Oh, I believe it was an email. But, again,
3 I'm not a hundred percent sure.

4 Q. When you got the litigation hold from Dan
5 Ellis, what did you do to preserve records?

6 A. I didn't -- I didn't delete anything.

7 Q. Did you do anything else?

8 A. I don't recall doing anything else.

9 Q. Did you instruct anybody to do anything else
10 other than Dan Ellis?

11 MR. GERAKITIS: Object to the form.

12 MS. PREBULA: Sure. I'll try again.

13 BY MS. PREBULA:

14 Q. Did you instruct anybody to take any action to
15 preserve this or do anything other than what Dan
16 Ellis did?

17 A. I did not. I -- I may have told my assistant
18 to make sure that she paid attention to that as well,
19 but...

20 Q. You may have told Ms. De La Cruz?

21 A. I may have, but I don't recall a specific
22 discussion on it. Dan was pretty clear in his
23 communication.

24 Q. Do you have a copy of the litigation hold?

25 A. I don't have a copy of any Carmike documents.

1 Q. Did the litigation hold instruct anyone -- let
2 me start over.

3 Did the litigation hold tell the corporate
4 employees who the documents that were being preserved
5 should be sent to?

6 A. I don't recall.

7 Q. Did it put anyone in charge of the litigation
8 hold?

9 A. I don't recall.

10 Q. But it wasn't you?

11 A. It was not me.

12 Q. Was an electronic database of all the
13 documents that were stored online relevant to
14 Ms. Trawick created as part of the litigation hold?

15 A. I don't know.

16 Q. Do you know anything that was done as part of
17 the litigation hold?

18 A. I don't.

19 Q. When you told Ms. De La Cruz to be aware of
20 the litigation hold, what did you have her do?

21 A. I don't recall specifically talking to her
22 about it. But it would be very customary for me to
23 tell her -- when something that crossed my desk of
24 importance like a litigation hold, to tell her not to
25 destroy anything.

1 Q. Who would know where these documents that were
2 supposedly put on litigation hold were stored?

3 A. I believe Dan Ellis would be able to answer
4 that.

5 Q. Is Dan Ellis IT literate?

6 A. You'll have to ask Dan that.

7 Q. Okay. When you had -- when you had IT issues,
8 did you go to Dan Ellis for IT issues?

9 A. Not generally, no.

10 Q. Who did you go to?

11 A. The IT people.

12 Q. Which is who?

13 A. Well, it depends on what period of time you're
14 talking about.

15 Q. In December of 2016, who was in charge of IT?

16 A. Jeff Butkovsky.

17 Q. Can you spell the last name?

18 A. I cannot.

19 Q. Okay. Let's see...

20 Okay. Let me show you what's marked
21 previously as Plaintiff's Exhibit 43. And under IT
22 it says Jeff Butkovsky.

23 A. Uh-huh. (indicating in the affirmative).

24 Q. Okay. So we will provide Exhibit 43 to the
25 court reporter. And that's the Jeff you're talking

1 about?

2 A. That is the Jeff I'm talking about.

3 Q. Do you know where he is now?

4 A. I do not.

5 Q. Have you seen him since the company was sold?

6 A. I have not.

7 Q. And there it says CTO. What is CTO?

8 A. I believe it's chief technology officer.

9 Q. And was he a part of your executive team?

10 A. He was not.

11 Q. So he's at sea level. Why is he not part of
12 the executive team?

13 A. Because he was not a direct report of mine.

14 Q. Okay. Were there any other sea level
15 employees who were not a direct report of yours?

16 A. Not that I recall.

17 Q. This particular document, Plaintiff's 43, is
18 dated at the bottom as revised January 21, 2015. Do
19 you see that?

20 A. I do see that.

21 Q. It's for corporate office, correct?

22 A. That's what it looks like.

23 Q. Do you recognize this document as a directory
24 of the employees and phone numbers at the corporate
25 office?

1 A. It looks like phone numbers that we
2 periodically receive from HR.

3 Q. Was this changed from January 2015 to the date
4 of Ms. Trawick's termination?

5 A. The format or the people?

6 Q. The people.

7 A. I'm sure there were changes between January
8 and November.

9 Q. Do you have copies of those?

10 A. I do not.

11 Q. Who would have copies of those?

12 A. I don't know.

13 Q. Who maintained that list?

14 A. I'm not certain, but I think it came from
15 human resources department.

16 Q. Are there any changes you know for sure
17 occurred between January 21, 2015 and mid-December
18 when Ms. Trawick was terminated?

19 A. Change in employees?

20 Q. Yes. That would have been changed from
21 Plaintiff's Exhibit 43.

22 A. You want me to tell you as I see them? It's
23 going to take me a while to go through all of this.
24 Do you want me to tell you as I see differences?

25 Q. Sure. Just the ones you know, however you

1 know them.

2 A. Okay. Under the controller group, I'm not
3 sure that all of these people were there in November
4 of 2015. Kathy Schoonover, was, I believe, an
5 accounting manager. I don't know when she left the
6 company.

7 Under COO, Megan Copner. She left the company
8 and came back, and I don't know if it was during that
9 period where she also came back. But she left at
10 some point and came back.

11 Q. And when you say under COO, you're not
12 implying she was a COO, are you?

13 A. No. Under the COO grouping, Fred Van Noy,
14 Gloria White and Megan Copner.

15 Q. Right.

16 A. Under financial reporting, there's Greg
17 Wiggins and Cathryn Smitherman. And I don't think
18 Cathryn was there at the time of Crystal's departure.

19 But I -- these are very difficult for me as
20 president and CEO to be looking down the list of
21 employees, but I'm --

22 Q. You can only tell me what you know.

23 A. I'm telling you what I think rather than what
24 I know for certain.

25 Q. Well, if you know for certain, tell me. And

1 if it's what you think, tell me.

2 A. In the legal department, it lists Linda Day
3 and Rebecca Jones. I'm not sure when Linda's last
4 day was, but I think it was sometime in November of
5 2015. She retired.

6 In real estate, the name Thomas Wilkerson. I
7 don't recall when he left the company, but I believe
8 it was sometime in 2015.

9 Just for point of clarification, we have on
10 this telephone listing Westfield, New Jersey's
11 office. That was considered part of corporate even
12 though it was not here in Columbus. And in that, I
13 don't -- I don't know, again, the exact time frame.

14 But Chuck Goldwater left the company, I
15 believe, sometime in 2015. Brett Marks is shown here
16 on the listing in January. I'm not sure he was even
17 an employee in January of 2015. He was not in
18 November of 2015.

19 And these are the only ones that I can think
20 of that would be there. Now, I don't specifically
21 recall people that we hired during that period --

22 Q. You can leave it there.

23 A. -- that might be on there in November that
24 weren't on there in January.

25 Q. Okay.

1 A. But just by way of example, if Kathy
2 Schoonover the controller's office was gone in
3 November, she would have been replaced by another
4 accounting manager and I don't know who that person
5 might be.

6 MS. PREBULA: Now is a good time to take a
7 short break. We've been going for a little while
8 so let's do that.

9 (Brief break)

10 (Upon resuming)

11 BY MS. PREBULA:

12 Q. So let's go back to April of 2013. At that
13 point, Ms. Trawick had been in the marketing
14 department for a while. And I asked you if you
15 recalled a conversation with her in April of 2013
16 with regard to having a title and a pay raise. And I
17 believe you said you didn't recall a specific
18 conversation.

19 A. Not in April of 2013.

20 Q. Do you recall a conversation with her before
21 she was given the title of marketing projects
22 manager?

23 A. I don't recall if it was before she was given
24 the title.

25 Q. Okay. Did you direct Mr. Van Noy in April of

1 2013 to speak with Ms. Trawick about the title and
2 the pay raise?

3 A. I don't recall that specifically.

4 Q. After she had been on the job about six
5 months, did you discuss with Fred Van Noy a pay raise
6 and a title for Ms. Trawick?

7 A. I don't recall discussing both of those.

8 Q. Ms. Trawick says that occurred. Do you have
9 any reason to believe that's not correct?

10 A. My recollection is that a title was not
11 discussed.

12 Q. Were Ms. Trawick's additional job
13 responsibilities discussed at that time?

14 A. I don't recall discussing job
15 responsibilities. I only recall discussing pay.

16 Q. Okay. Did you direct Mr. Van Noy to have a
17 meeting with Ms. Trawick the next morning?

18 A. I don't recall directing him to have a meeting
19 with her the next morning, no.

20 Q. And then after that meeting in April of 2013,
21 this Plaintiff's Exhibit 44 was provided to
22 Ms. Trawick. Do you have any knowledge of that?

23 A. I do not.

24 Q. Okay. And these -- well, Plaintiff's Exhibit
25 44 -- well, let me back up. You were not in a

1 meeting with Mr. Van Noy and Mr. Mayton
2 and Mr. Sailors and Crystal Trawick in April of 2013
3 to discuss her job duties; correct?

4 A. That is correct.

5 Q. Okay. Did you come to learn that these were
6 the job duties provided to Ms. Trawick in April of
7 2013?

8 A. Not specifically, no.

9 Q. Okay. Is it your understanding today that
10 those were the job duties she was given in April of
11 2013?

12 A. It is not. I have no basis in which to say
13 those were or were not.

14 Q. Do you know who prepared Plaintiff's 44?

15 A. I do not.

16 Q. Okay. What do you recall about the pay raise
17 being discussed?

18 A. That Crystal and I had an informal discussion
19 where she said she had not had a pay raise in a long
20 time. And I told her I would speak to Fred about
21 making sure that her pay was considered and updated
22 if necessary.

23 Q. Do you remember when that happened?

24 A. I don't.

25 Q. Did you speak to Fred?

1 A. I did.

2 Q. Fred Van Noy?

3 A. Yes.

4 Q. Did you have more than one such conversation
5 with Ms. Trawick?

6 A. About her pay?

7 Q. Correct.

8 A. I believe Ms. Trawick commented about wanting
9 more pay several times informally.

10 Q. What do you mean by informally?

11 A. Crystal was not a direct report of mine. She
12 would schedule appointments with me periodically and
13 ask my advice on a variety of issues or to tell me
14 about things that were going on in her life. I would
15 say it was informal career discussions.

16 Q. You consider an employee telling you that she
17 wants a pay raise to be an informal discussion?

18 A. Yes.

19 Q. Even when you then direct her supervisor to
20 talk to her about it?

21 A. Yes.

22 Q. Why? Why is that not formal when she has
23 scheduled a meeting with you?

24 A. The meeting that she scheduled with me was not
25 to talk about pay.

1 Q. Nevertheless, it was discussed.

2 A. She mentioned that she felt she was underpaid.

3 Q. And why is that informal?

4 A. Because I believe it was.

5 Q. I'm trying -- I'm asking you your basis for
6 why you think that's informal when an employee has
7 scheduled a meeting with you. You took the meeting,
8 right? And you discussed the pay.

9 A. It was -- it was a very small part of the
10 discussion that we had each and every time. I must
11 say, lots of employees have told me they believe they
12 were underpaid.

13 Q. Did you discuss with Mr. Van Noy when
14 Ms. Trawick would be considered for a pay increase
15 after April 2013?

16 A. Would you repeat the question?

17 Q. Yeah. I'm asking you a timing element. Did
18 you discuss with Mr. Van Noy when or what time
19 Ms. Trawick would be considered for a pay raise after
20 April of 2013?

21 A. No.

22 Q. Did you ever tell Mr. Van Noy to direct her
23 that she would be evaluated for a pay raise and
24 considered for a director's position six months after
25 April of 2013?

1 A. No.

2 Q. In the late summer, early fall of 2013 Terrell
3 Mayton was terminated, correct?

4 A. When was...

5 Q. Late summer, early fall, 2013.

6 A. That sounds right.

7 Q. Do you recall which -- which of those?
8 August, September?

9 A. I don't recall.

10 Q. Okay. But that time frame?

11 A. I -- I think so.

12 Q. Okay. And at that point, Ms. Trawick and
13 Mr. Sailors reported directly to Terrell Mayton
14 before his termination.

15 A. I believe that's correct.

16 Q. Okay. And then after Mr. Mayton left, those
17 two: Mr. Sailors and Ms. Trawick reported directly
18 to Mr. Van Noy.

19 A. I believe that's correct.

20 Q. Did you have anything to do with that
21 termination?

22 A. Of Mr. Mayton?

23 Q. Correct.

24 A. Yes.

25 Q. And what was the reason for the termination,

1 generally? I'm not asking you to go into his life.

2 But generally, why was he terminated?

3 A. There were a whole host of reasons, including
4 the lack of success and progress of the marketing
5 department. Studio relationships which was a
6 significant part of the job were at a state of
7 irreparable.

8 Q. Did you make the decision that Ms. Trawick and
9 Mr. Sailors would report directly to Mr. Van Noy at
10 that point?

11 A. The executive team discussed what to do with
12 regard to the marketing department. We considered a
13 couple of options. And the final conclusion, which
14 was mine, was to ask Fred to oversee it until we
15 could find a suitable replacement or someone to
16 oversee the marketing department.

17 Q. Were you involved in -- and, again, Fred
18 Van Noy?

19 A. That's correct. Sorry.

20 Q. Were you involved in assigning the
21 responsibilities to Ms. Trawick after Mr. Mayton
22 left?

23 A. No.

24 Q. Who did that?

25 A. Fred Van Noy.

1 Q. All right. Are you aware that from April 2013
2 through when Mr. Mayton left, that Ms. Trawick was
3 already requesting a pay raise and a title before she
4 got increased responsibilities?

5 MR. GERAKITIS: Object to the form.

6 DEPONENT PASSMAN: Again, as to title, I don't
7 recall that.

8 BY MS. PREBULA:

9 Q. But yes as to pay raise?

10 A. But yes as to pay raise or compensation.

11 Q. Is it your testimony that there was never any
12 discussion with you with regard to Ms. Trawick
13 becoming a director?

14 A. I do not recall any conversation with her as
15 to title of director.

16 Q. Is it your understanding that after Mr. Mayton
17 left, that his duties were divided up and the
18 marketing duties were given to Ms. Trawick at that
19 point?

20 A. No, that's not my understanding.

21 Q. What's your understanding?

22 A. Most of the duties of Mr. Mayton were
23 supervising the tasks of the people of the marketing
24 department, including advertising. And some of those
25 duties or responsibilities of oversight were given to

1 Crystal. Some of those, as I understand it, were
2 given to Shannon. And it was a band-aid approach, if
3 you will, to make sure the marketing department was
4 being administered.

5 Q. When you say Shannon, you mean Shannon
6 Sailors?

7 A. Shannon Sailors.

8 Q. Okay. Did you have an understanding of what
9 Mayton's daily responsibilities and duties were?

10 A. I did not.

11 Q. Okay. Did he do press releases and PR copy?

12 A. When you say did he do them, did he author
13 them? Is that what you mean?

14 Q. Yes, did he author them? Did he control them?
15 Did he supervise them?

16 A. I don't know that he authored them. He should
17 have supervised them. Whether he did or not, I can't
18 speak to.

19 Q. Did that task then pass to Ms. Trawick upon
20 Mr. Mayton's termination?

21 A. You'll have to ask Mr. Van Noy that.

22 Q. You don't know?

23 A. I don't know with certainty. I received
24 emails from her that included draft press releases.
25 I don't know who authored them, who supervised them.

1 I just know who transmitted them.

2 Q. Is it fair to say that after Mr. Mayton left,
3 that Ms. Trawick did get some increased
4 responsibilities?

5 A. I don't know if it's fair to say. You'll have
6 to ask Mr. Van Noy what duties of hers changed.
7 Again, Mr. Mayton and Ms. Trawick have different
8 skill sets. Fred decided which of those skill sets
9 to utilize.

10 Q. Is it your testimony that you do not know that
11 Ms. Trawick got increased responsibilities after
12 Mr. Mayton left?

13 A. It is my testimony that I do not know that.

14 Q. Are you aware that Ms. Trawick worked on the
15 marketing strategy for both advertising and marketing
16 after Mr. Mayton left?

17 A. No, I am not aware of that.

18 Q. Did Ms. Trawick work or be involved in hiring
19 and management of personnel for both marketing and
20 advertising after Mr. Mayton left?

21 A. I don't know.

22 Q. Was Ms. Trawick asked to travel more after
23 Mr. Mayton left?

24 A. I do not know.

25 Q. At some point after Mr. Mayton left, did she

1 then start attending the Monday meetings and make
2 marketing presentations?

3 A. I do not know. I did not attend those Monday
4 meetings.

5 Q. Were you in attendance at the manager's
6 conference each year?

7 A. Theater managers?

8 Q. Correct.

9 A. Yes, I was.

10 Q. And did Ms. Trawick make marketing
11 presentations to the entire company at the manager's
12 conference in 2013?

13 A. Not the entire company. Those in attendance,
14 she made presentations. I don't know how many
15 presentations or which years.

16 Q. Is it fair to say she made them every year for
17 2013, '14 and '15 before she was terminated?

18 A. I didn't catch part of your --

19 Q. Did Ms. Trawick make presentations to the
20 manager's conference with regard to marketing and
21 advertisement every year of 2013, 2014, and '15 after
22 Mayton left?

23 A. I don't know with certainty. She made
24 presentations at manager conferences. I just don't
25 recall which years.

1 Q. And more than 600 people attended those
2 manager conferences each year?

3 A. No.

4 Q. No. How many people attended those
5 conferences generally?

6 A. It would have been all of the theater managers
7 which numbered at most 260 or so. Maybe 280 in the
8 last year. Probably 30 or so from corporate. I
9 would guess the total attendance at those meetings of
10 Carmike employees would have been between 300 and
11 400.

12 Q. And you do know that she did make
13 presentations on marketing to at least some of those
14 manager conferences after Mr. Mayton left?

15 A. Yes, she did. And as did Shannon.

16 Q. And she had not made those presentations
17 before Mr. Mayton left, correct?

18 A. That, I don't -- I don't recall. It would not
19 have been unusual for her to make a presentation
20 prior to him leaving.

21 Q. But you just don't know.

22 A. I just don't recall.

23 Q. It would not have been unusual for her to make
24 a marketing presentation at the manager's conference
25 prior to Mayton leaving?

1 A. Yeah, she was what I would call a subject
2 matter expert working for Terrell on discreet
3 projects. And if she was working on a project that
4 would be of interest to the theater managers, she
5 would be asked to make a presentation on it, as would
6 other corporate employees.

7 Q. In fact, wasn't Ms. Trawick kind of the face
8 of Carmike in Columbus? Didn't she appear in the ads
9 and the promotions and the brochures?

10 A. I don't recall her appearing in ads and
11 promotions and brochures. I believe I was the face
12 of Carmike in Columbus.

13 Q. Do you have any pictures of you presenting in
14 ads, et cetera for Carmike?

15 A. I don't recall any pictures of me in ads for
16 Carmike.

17 Q. And Crystal did television interviews for
18 Carmike; did she not?

19 A. I don't know if she did. I wouldn't be
20 surprised.

21 Q. And wasn't -- after Mr. Mayton left, wasn't
22 Ms. Trawick in charge of all social media for
23 Carmike?

24 A. I don't know.

25 Q. I don't want to belabor the point, but if I

1 ask you about any specific task or duty that
2 Ms. Trawick had, is your response going to be the
3 same, you don't know? I don't want to waste your
4 time or hours.

5 A. It probably will.

6 Q. Okay. Can you tell me any specific duties
7 that you're aware of that Ms. Trawick took on after
8 Mr. Mayton left?

9 A. I cannot.

10 Q. You just don't recall?

11 A. I just don't.

12 Q. Okay. Did you have anything to do with her
13 evaluation in October of 2013?

14 A. I don't recall.

15 Q. Did you have anything to do with her
16 performance evaluation in 2012?

17 A. I don't recall.

18 Q. How about 2014?

19 A. I don't recall.

20 Q. Was she given a performance evaluation in
21 2015?

22 A. I don't recall.

23 Q. Was it an operating policy of the company for
24 an employee to have a performance evaluation each
25 year?

1 A. I don't know if it was a written policy.

2 Q. Was it a -- I mean, you've already told me
3 there are informal policies. Was it the policy of
4 the company to do a performance evaluation each year?

5 A. I think so, but I don't know with certainty.

6 Q. Did you do performance evaluations of your
7 reports each year?

8 A. No, not each year.

9 Q. Were you involved at all other than approval,
10 which you told me earlier, in setting Ms. Trawick's
11 pay from 2012 to 2015?

12 A. I don't recall.

13 Q. Was it a policy of the company when a
14 performance evaluation was done that the evaluation
15 must be discussed with the employee?

16 A. I don't know if that was policy.

17 Q. Were there any written policies with regard to
18 pay, title, promotion, et cetera of which you are
19 aware?

20 A. Could you reask the question?

21 Q. Sure. Were there any written policies with
22 regard to pay, promotion or title of which you are
23 aware?

24 A. No, not for which I'm aware.

25 Q. Was there a policy manual -- policies and

1 procedure manual at Carmike that dealt with human
2 resource issues such as pay, promotion, et cetera?

3 A. We had an employee handbook. We had a code of
4 conduct. We had IT policies and procedures. I don't
5 know if those would be included in your question or
6 not.

7 Q. Did you review those three documents before
8 your deposition in preparation?

9 A. No.

10 Q. So there was not a separate policies and
11 procedures manual other than those three?

12 A. There may have been, but those are the ones
13 that I recall. I think there may have been something
14 for field personnel like theater managers as well.
15 But I just don't recall if it was a separate
16 document.

17 Q. Did you discuss with Mr. Van Noy at the end of
18 2013 that Ms. Trawick's pay was exceedingly low for
19 the market?

20 A. No.

21 Q. Is it your testimony that you never discussed
22 promoting Ms. Trawick with Mr. Van Noy?

23 A. No, that's not my testimony.

24 Q. Okay. Did you discuss promoting Ms. Trawick?

25 A. Yes.

1 Q. And what discussions were those with
2 Mr. Van Noy?

3 A. Ms. Trawick had said that she wanted to be in
4 charge of marketing overall. And Fred and I
5 discussed -- Fred Van Noy and I discussed it. The
6 executive team discussed it and concluded that she
7 had not -- she did not qualify for that role.

8 Q. Did you ever tell her that?

9 A. I had a conversation with her in which I told
10 her that I thought she needed to work under an
11 experienced seasoned executive in marketing and learn
12 as much as possible before she would be able to
13 assume that type of responsibility.

14 Q. When did you have that conversation?

15 A. I don't recall.

16 Q. It was after Mr. Mayton left certainly.

17 A. Yes, it was.

18 Q. And how long before she was terminated?

19 A. I don't know.

20 Q. Was that the same conversation where you and
21 Ms. Trawick discussed a glass ceiling at Carmike?

22 A. No.

23 Q. Do you recall that conversation, discussing
24 the glass ceiling at Carmike?

25 A. I do.

1 Q. When was that discussion?

2 A. I don't know the date.

3 Q. Was it how long before she left?

4 A. I don't know.

5 Q. Tell me what you recall about that discussion.

6 A. She scheduled an appointment with me. Told me
7 that she had been asked to appear on a panel, I think
8 at a junior college seminar dealing with -- I don't
9 even remember the title. But she said that she had
10 planned to discuss the corporate America glass
11 ceiling and how difficult it is being a woman in the
12 work place, and give advice to those in attendance as
13 to how to be successful.

14 Q. And did you tell her she had not reached her
15 glass ceiling?

16 A. I don't remember she and I talking about her
17 glass ceiling.

18 Q. Did you tell her that in order for her to be
19 promoted, she had to have a degree?

20 A. No.

21 Q. You deny that?

22 A. Absolutely.

23 Q. Did you know that she already had a degree?

24 A. I did not.

25 Q. Did you tell her there was not a glass ceiling

1 at Carmike?

2 A. I told her that I did not believe there was a
3 glass ceiling at Carmike, yes.

4 Q. In fact, didn't you tell her that it was
5 unfortunate but that's the way it was; that there was
6 a glass ceiling?

7 A. At Carmike?

8 Q. In general.

9 A. No, that's not what I told her.

10 Q. Did you tell her: Unfortunately, the reality
11 is there is a glass ceiling for women. It's
12 unfortunate, but it's tougher.

13 A. No, that's not what I said.

14 Q. Did you deny that there was a glass ceiling at
15 Carmike?

16 A. I told -- I don't believe she accused Carmike
17 of having a glass ceiling. So there was nothing to
18 deny with regard to a glass ceiling at Carmike.

19 Q. Well, in fact, hadn't she discussed with you
20 on several occasions that Shannon Sailors had a title
21 of director and was making more money. And she
22 repeatedly asked for more money. You don't remember
23 the title, but she asked for more money?

24 A. Not repeatedly, but -- and not in comparison
25 to Shannon Sailors.

1 Q. Did -- when you had that discussion with
2 Ms. Trawick about the glass ceiling, do you recall
3 that that was in March of 2015, about six months
4 before she was terminated?

5 A. I don't recall the date, but I certainly don't
6 dispute that date.

7 Q. Okay. You recall it was in 2015?

8 A. I don't recall whether it was or not, but I
9 don't dispute it.

10 Q. At the time you had that discussion with --
11 well, do you recall that the -- I think you said the
12 presentation she was doing was for a junior college.
13 Do you recall that that was in the spring of 2015?

14 A. I don't recall the date.

15 Q. Okay.

16 A. I do remember that was the theme. And it may
17 or may not have been a junior college. I just seem
18 to remember that it was a junior college.

19 Q. And whenever that discussion was, you had this
20 conversation shortly before that?

21 A. That's correct.

22 Q. Before that panel?

23 A. That's correct.

24 Q. At that point in time when you specifically
25 discussed the glass ceiling for women and Ms. Trawick

1 has been asking for a pay raise, did you report that
2 to human resources?

3 A. Ms. Trawick did not discuss a pay raise in
4 that discussion.

5 Q. But you had many discussions with her about
6 the pay raise.

7 A. She had complained about being underpaid
8 several times.

9 Q. And you deny she said anything with regard to
10 Sailors. But now she's talking to you about a glass
11 ceiling for women and the top challenges that women
12 face in the work force. And she specifically asked
13 you has she reached her glass ceiling at Carmike.

14 MR. GERAKITIS: Object to the form.

15 BY MS. PREBULA:

16 Q. Do you recall that?

17 A. No.

18 MR. GERAKITIS: Object to form.

19 BY MS. PREBULA:

20 Q. After that discussion, did you report it to
21 human resources?

22 A. I did not.

23 Q. Why not?

24 A. I didn't believe it was a reportable event.

25 Q. When someone makes any statement to you that

1 is any indication of discrimination based on gender,
2 did you understand that you had a duty to report that
3 to human resources?

4 A. She did not make a claim on discrimination
5 based on gender. She said she felt she was
6 underpaid.

7 Q. So her comments to you about a glass ceiling
8 for women is not a statement of discrimination based
9 on gender?

10 A. We were not talking about a glass ceiling at
11 Carmike.

12 Q. And if she says that she were, do you dispute
13 that?

14 A. I do.

15 Q. Okay. So let's assume that your understanding
16 was she was talking about a glass ceiling for women.
17 Did you report that conversation to human resources?

18 A. I did not.

19 Q. Okay. Did you understand that if you have any
20 indication of any discrimination on the part of any
21 employee, that as an officer of the company, you had
22 a duty to report that to human resources?

23 MR. GERAKITIS: Object to form.

24 DEPONENT PASSMAN: I don't believe she made a
25 discrimination complaint.

1 MS. PREBULA: Would you read back my question,
2 please.

3 (Question read back as requested)

4 DEPONENT PASSMAN: If someone reported it or
5 suggested discrimination, I would report it to HR.

6 BY MS. PREBULA:

7 Q. And a female talking to you about a glass
8 ceiling for women is not an indication of
9 discrimination to you?

10 A. It is not necessarily an indication of
11 discrimination to me, no.

12 Q. The -- do you know how many women directors
13 there were at Carmike between 2012 and 2015?

14 A. I do not.

15 Q. Do you know how many women in a nonclerical
16 position reported to Mr. Van Noy during his tenure at
17 Carmike?

18 A. I do not.

19 Q. Have you discussed with Mr. Van Noy any
20 testimony he is going to give in this case?

21 A. I have not.

22 Q. The -- were you aware that prior to you taking
23 over as president and CEO, that Carmike had, in fact,
24 been sued for discrimination more than once?

25 A. I am not.

1 Q. No one at human resources or the board made
2 you aware that claims had been filed against Carmike
3 in the past for discrimination or harassment?

4 MR. GERAKITIS: Object to the form.

5 DEPONENT PASSMAN: No.

6 BY MS. PREBULA:

7 Q. No one on the board made you aware that claims
8 had been filed for discrimination against Carmike
9 prior to your coming in?

10 A. No.

11 Q. Would it be your understanding of your
12 corporate policy that if Ms. Trawick discussed with
13 her immediate supervisor that she should have pay and
14 promotion similar to Mr. Sailors, and that she felt
15 she was being treated differently, that that is
16 something that should have been reported to human
17 resources?

18 MR. GERAKITIS: Object to form.

19 DEPONENT PASSMAN: I don't know.

20 BY MS. PREBULA:

21 Q. You don't understand your policy?

22 A. I don't -- I don't know how to answer that
23 question that -- if someone complained to me about
24 discrimination, I would take it to HR and legal and
25 ask them to investigate it.

1 Q. So is it your testimony that someone had to
2 use the word discrimination before it would be
3 reported under your policy?

4 A. No.

5 Q. So back to my earlier question, if someone had
6 complained to their immediate supervisor that they
7 felt that they were being treated unfairly in terms
8 of pay and promotion as compared to a male employee,
9 is that something that should have been reported to
10 human resources?

11 A. I don't know.

12 Q. You don't know under your policy?

13 A. I don't.

14 Q. Have you read the policy?

15 A. Yes.

16 Q. Did you read it when you were president of the
17 company?

18 A. Yes.

19 Q. Were there any internal complaints of
20 discrimination or harassment by women while you were
21 president of the company?

22 A. At corporate?

23 Q. At any point.

24 MR. GERAKITIS: From founding in the 70s?

25 MS. PREBULA: No, I said while he was

1 president of the company.

2 MR. GERAKITIS: He asked for clarification.

3 Go ahead.

4 BY MS. PREBULA:

5 Q. At any point while he was president of the
6 company.

7 A. Claims -- could you repeat the question one
8 more time?

9 Q. Sure. Were there any internal complaints of
10 discrimination at Carmike while you were president of
11 the company?

12 A. I believe there were.

13 Q. And what were those complaints?

14 A. Those were field level part-time or full time.
15 I believe part-time employees at the theater level.

16 Q. And what was the basis of the complaint?

17 A. I don't know that there was. They were
18 investigated and resolved through human resources.

19 Q. I think you misunderstood my question. Was
20 the basis of the complaint gender discrimination,
21 racial discrimination, religious discrimination?
22 What was the basis?

23 A. I don't recall.

24 Q. Did you get reports from human resources when
25 there were internal complaints of discrimination?

1 A. From human resources, no.

2 Q. Did you get reports from anyone when there
3 were internal complaints of discrimination?

4 A. Yes.

5 Q. And who was that from?

6 A. Dan Ellis.

7 Q. How many such reports did you receive while
8 you were president?

9 A. I believe we received reports quarterly.

10 Q. And in each of those reports, was there a
11 claim of discrimination?

12 A. In each of those reports, no.

13 Q. So how many reports of internal complaints of
14 discrimination did you receive while you were
15 president?

16 A. I don't know.

17 Q. More than a hundred?

18 A. No.

19 Q. Do you have any reasonable basis for giving me
20 your best estimate?

21 A. They were fairly rare.

22 Q. What does that mean?

23 A. They were very infrequent. There might have
24 been a couple a year. And generally they were about
25 abusive behavior of supervisors at the theater level.

1 Q. Toward women?

2 A. No.

3 Q. Toward which group?

4 A. Not toward any specific group. It might be a
5 woman. It might be -- it might be anything. But I
6 don't remember gender based complaints as opposed to
7 other complaints.

8 Q. And -- you just don't remember?

9 A. I just don't.

10 Q. Who would have been in charge of that? Human
11 resources?

12 A. Well, we had outside -- we had an outside
13 service with a help line. The help line would
14 summarize those. They would go to the general
15 counsel or legal department. And each of those
16 complaints received would be investigated through the
17 human resource department and/or other folks as
18 necessary. It could be a district manager or legal.

19 Q. And can you also make complaints to -- could
20 an employee also make such complaint to their
21 supervisor?

22 A. They could.

23 Q. And any member of the executive team?

24 A. They could.

25 Q. So you didn't have to go through this

1 anonymous 800 number?

2 A. No.

3 MR. GERAKITIS: Object to form.

4 BY MS. PREBULA:

5 Q. The -- when the complaints were made, would
6 you be made aware of the names of the employees?

7 A. I don't recall seeing names of employees.

8 Q. Would it be different whether the complaint
9 was made to -- personally to an individual or
10 reported on the 800 number whether or not you would
11 see the name of the employee?

12 A. I don't know.

13 Q. Okay. When a company -- so it's fair to say
14 that once someone made a complaint of discrimination
15 or harassment to a supervisor, that that was reported
16 to legal or HR or both?

17 A. I don't know if it's fair to say. Any
18 complaint made was investigated through HR. And
19 where necessary, legal would also be involved.

20 Q. Okay. I misunderstood your earlier testimony
21 then. So if someone made a complaint of
22 discrimination or harassment, they could make it to
23 the supervisor, any member of the executive team or
24 the 800 number?

25 A. That's correct.

1 Q. Okay. And then that information was provided
2 -- let me back up. Could they also make such a
3 complaint directly to HR?

4 A. They could.

5 Q. Okay. So if it was made directly to a
6 supervisor, a complaint of discrimination or
7 harassment, that supervisor had a duty to report it
8 to HR?

9 A. Yes, I believe so.

10 Q. And then HR would investigate and bring in
11 legal if they needed to; is that right?

12 A. Yes, I believe so.

13 Q. Okay. The -- when the litigation hold came in
14 for this case, did you segregate any documents or
15 emails regarding this case?

16 A. I did a search on my emails to see if I had
17 any communications to or from Crystal or where her
18 name was in the subject matter. I did not. And so
19 there was -- there was no segregation necessary.

20 Q. Did you search any of your other documents?

21 A. I thought about other documents that could
22 include Crystal; but I had very little in the way of
23 documents in my office of any kind. And I don't
24 remember rifling through every document that was in
25 my office to see if they would contain. I looked at

1 the obvious places.

2 Q. And you're talking about paper at this point,
3 right?

4 A. Yes, that's right.

5 Q. But you had access to the Carmike network,
6 right, where documents were stored?

7 A. I did have access to the Carmike network.

8 Q. Did you search that as part of the litigation
9 hold?

10 A. I did not.

11 Q. Did you search any backup tapes or media --

12 A. I did not.

13 Q. -- as part of the litigation hold?

14 A. I did not.

15 Q. Did you direct anybody to do that?

16 A. I did not.

17 Q. You said you used Outlook for your calendar.
18 Did you use Outlook for email as well?

19 A. I did.

20 Q. Was your Outlook hosted by a network provider?

21 A. We use Microsoft Exchange and I believe it was
22 all internally controlled.

23 Q. Did you -- do you know who contained -- who
24 had or controlled your domain name at that time?

25 A. I don't.

1 Q. Okay. Did you conduct any searches on the
2 external domain?

3 A. I did not.

4 Q. Did you direct anybody to?

5 A. I did not.

6 Q. Did you conduct any searches of any deleted
7 files on your computer or network?

8 A. I looked at my email deleted files, yes.

9 Q. How far back did you keep email deleted files?

10 A. I permanently deleted emails periodically so
11 I'm not sure what period of time would have been
12 covered in my deleted email search.

13 Q. Did you make any attempt to recover any
14 deleted files on any computer or network?

15 A. I did not.

16 Q. Did you instruct anybody to?

17 A. I did not.

18 Q. Did you make any copies or images of any hard
19 drives or any files on your computer or network?

20 A. I did not.

21 Q. How -- do you know how you back up your
22 network?

23 A. I don't back it up.

24 Q. Understood. Do you understand how Carmike
25 backed up your network?

1 A. I only generally understand how it's backed
2 up.

3 Q. What's your understanding?

4 A. That it's backed up nightly.

5 Q. Onto what media?

6 A. Onto, I believe, tape.

7 Q. Did you instruct anyone to research or
8 preserve or make a copy of those backup tapes so that
9 they were preserved after the litigation hold was
10 issued?

11 A. I did not.

12 Q. Are you aware of anybody doing so?

13 A. I am not.

14 Q. Do you know how often your backup tapes are
15 over-written?

16 A. I don't.

17 Q. Do you have any written policy as to how often
18 backup tapes are over-written?

19 A. I don't know.

20 Q. I'm assuming that the same person that you
21 told me before, your IT director, would know that.
22 You told me Jeff Butkovsky. I'm assuming he would
23 know that; is that correct?

24 A. He should.

25 Q. Okay. The -- did you hire any outside service

1 to come in and preserve any documents for a
2 litigation hold?

3 A. I did not.

4 Q. Did anybody at Carmike?

5 A. I don't know.

6 Q. Did you discuss with Ms. Trawick having the
7 director's title at any point other than the one
8 conversation you told me about?

9 A. I don't recall having a discussion with
10 Ms. Trawick about a director title.

11 Q. Did -- did Mr. Van Noy have any discussion
12 with you in March of 2015 around the same time as the
13 panel presentation Ms. Trawick was going to make that
14 if she was made director of marketing, that she would
15 still report to a CMO and would not impede a hiring
16 of a CMO?

17 MR. GERAKITIS: Object to the form.

18 BY MS. PREBULA:

19 Q. You can answer.

20 A. I'm sorry. That was a very long question.
21 Would you repeat it?

22 Q. Did you have any discussion with Mr. Van Noy
23 in April of -- excuse me -- in March of 2015 around
24 the same time as the panel that Ms. Trawick had
25 discussed if she was made director of marketing, that

1 would not prevent you from hiring a CMO?

2 A. I don't recall that.

3 Q. Did Fred Van Noy ever raise that issue with
4 the executive team in spring of 2015?

5 A. I don't recall that.

6 Q. The -- and does that "you don't recall" mean
7 you don't recall it happening or you don't recall one
8 way or the other?

9 A. I don't recall it happening.

10 Q. Did Mr. Van Noy promote any woman to a
11 director's position while he was at Carmike?

12 A. I don't know.

13 Q. In September of 2015, did you have a
14 discussion with Ms. Trawick where she told you that
15 she had been contacted about another job opportunity?

16 A. I don't recall the date. I -- I did have a
17 conversation with her about being contacted by -- or
18 for another job opportunity.

19 Q. And that was several months before she was
20 terminated, correct?

21 A. I don't know the date.

22 Q. Do you recall that it was shortly before she
23 was terminated?

24 A. I do not recall that.

25 Q. Did -- and did she discuss with you again that

1 her lack of compensation and the lack of the title of
2 director?

3 A. Not that in that conversation, no.

4 Q. You do not recall her telling you that her
5 compensation was low compared to what she had found
6 in looking at this other position, and the lack of
7 director title was also inappropriate based upon
8 Mr. Sailors?

9 A. No.

10 Q. Didn't she also tell you that Mr. Sailors had
11 a director title and was performing similar job
12 functions and she asked you again, based on the
13 conversation we had earlier regarding glass ceilings,
14 have I hit mine with the company?

15 A. No.

16 Q. You deny that that occurred?

17 A. I do.

18 Q. When a female employee tells you that their
19 pay is low compared to a man and their title is
20 missing compared to a man who has a director's title
21 performing the same job functions, do you understand
22 that to be discrimination?

23 A. I do not.

24 Q. Regardless of what female says that to you?

25 A. I do not. If a person told me they felt they

1 were being discriminated against, I would go to HR
2 and ask them to investigate.

3 Q. So, again, is it your testimony that they must
4 use that word discrimination?

5 A. It is not.

6 Q. So if a female tells you that her pay is low
7 and she does not have the same title as a male
8 performing the same functions, do you consider that
9 discrimination?

10 MR. GERAKITIS: Object to the form.

11 DEPONENT PASSMAN: I don't know if it's
12 discrimination. I would take it to HR and ask
13 them to investigate it.

14 BY MS. PREBULA:

15 Q. Did you ever take any of Ms. Trawick's
16 comments to HR?

17 A. No.

18 Q. Did you ever investigate whether Mr. Sailors
19 was actually performing similar job duties to
20 Ms. Trawick?

21 A. I did not.

22 Q. Did you ever investigate whether Mr. Sailors'
23 pay was higher than Ms. Trawick's?

24 A. I did not.

25 Q. The -- at that time in September of 2015, did

1 you tell Ms. Trawick to be considered for management
2 the way men look at it, you're going to have to have
3 a degree?

4 MR. GERAKITIS: Objection.

5 DEPONENT PASSMAN: I did not.

6 BY MS. PREBULA:

7 Q. Did you ever tell Ms. Trawick that in order to
8 be in management, she had to have a degree?

9 A. I did not.

10 Q. Did -- do you understand whether or not
11 Mr. Sailors has a degree?

12 A. I don't.

13 Q. Do you know whether or not Mr. Mayton had a
14 degree?

15 A. I did not investigate Mr. Mayton at the time
16 he was being hired, but I believe it was on his --
17 but I think I saw it on his resume.

18 Q. Do you know whether Mr. Van Noy has a degree?

19 A. I don't.

20 Q. Do you know whether Mr. Hare has a degree?

21 A. I do.

22 Q. And what's the answer?

23 A. Yes.

24 Q. Did you ever investigate whether Mr. Van Noy
25 had a degree?

1 A. No.

2 Q. From 2012, when Ms. -- at the end of 2012 when
3 Ms. Trawick went into marketing through the date of
4 her termination, how many managers were in the
5 company?

6 A. I don't know.

7 Q. How many directors were in the company for
8 that period of time?

9 A. I don't know.

10 Q. Did the company keep such records?

11 A. I don't know with certainty, but I would
12 assume it did.

13 Q. Assuming that would be HR?

14 A. Yes.

15 Q. Are you aware of any female directors in the
16 company from 2012 to Ms. Trawick's termination in
17 November of 2015?

18 A. I'm not aware one way or the other.

19 Q. What role did you play in Ms. Trawick's
20 termination?

21 A. I think the first discussion I had was with
22 general counsel and Fred Van Noy telling me that
23 there was an issue and they reviewed the -- the issue
24 and then made the recommendation that she be
25 terminated for insubordination. And that was

1 reviewed not only with me, but Richard Hare. And
2 based on that recommendation, I reluctantly but
3 nevertheless felt it was the right thing to do to
4 terminate her.

5 Q. So what role did you play in her termination?

6 A. The discussion on the termination and the
7 conclusion by the executive team to terminate her.

8 Q. Okay. And the -- so what reason were you
9 given for termination? Insubordination?

10 A. Yes.

11 Q. Did Carmike ever report that Ms. Trawick
12 resigned?

13 A. Not that I'm aware.

14 Q. Did Carmike ever state that Ms. Trawick was
15 terminated for misuse of funds?

16 A. Not that I'm aware.

17 Q. Did Carmike ever state that Ms. Trawick was
18 terminated for -- as a result of the investigation
19 you talked about with regard to approvals of
20 sponsorships?

21 A. Not that I'm aware.

22 Q. You were aware that it was part of
23 Ms. Trawick's job to promote Carmike in the community
24 and community events and those kinds of things,
25 right?

1 A. Yes.

2 Q. And when the discussion was had with you as to
3 the nature of the insubordination, what were you
4 told?

5 A. I was given a recap of the events leading --
6 the couple of days leading up to the termination.

7 Q. And what were you told?

8 A. I was told that there were some questionable
9 expenditures. That Crystal was -- Ms. Trawick was
10 told that there would be an investigation, it was a
11 serious matter. And that she was instructed not to
12 discuss the investigation with anyone.

13 And that she violated that and discussed it
14 with at least two other people, one being a
15 subordinate, one being a peer, and the third being my
16 assistant in violation of that directive.

17 And that because of that, she was -- it was
18 recommended that she be terminated. And that the
19 people involved: Fred, Dan, Richard and myself felt
20 that -- that insubordination created a lack of
21 confidence and trust.

22 Q. Did -- and you said Fred Van Noy?

23 A. Yes, I'm sorry.

24 Q. And Dan Ellis?

25 A. Correct.

1 Q. And Richard Hare?

2 A. And Richard Hare.

3 Q. Did you do any independent investigation to
4 determine what Ms. Trawick was actually told in that
5 meeting?

6 MR. GERAKITIS: Object to the form.

7 DEPONENT PASSMAN: I'm not sure what an
8 independent investigation would entail. But we
9 had a fairly thorough discussion between Fred,
10 Dan, Richard and myself.

11 BY MS. PREBULA:

12 Q. And did you have any discussion with
13 Ms. Trawick as to what she was actually told in that
14 meeting?

15 A. I did not.

16 Q. Did HR?

17 A. I don't know.

18 Q. Did -- and this investigation and meeting
19 occurred in November 2015?

20 A. Yes.

21 Q. And that occurred after she had the
22 discussions of the glass ceiling with you, correct?

23 MR. GERAKITIS: Object to the form.

24 DEPONENT PASSMAN: Yes, that would have been
25 after the discussion we had on her presentation.

1 Yes.

2 BY MS. PREBULA:

3 Q. And that was after the discussion where you
4 say you told her she needed to work under someone
5 else, correct?

6 A. Yes.

7 Q. And that would have been after the discussion
8 where -- that you had in early September of 2015 --
9 spring of 2015 where she told you that she was going
10 to present at the panel with regard to the glass
11 ceiling for women and how women had to work harder;
12 correct?

13 MR. GERAKITIS: Object to the form.

14 DEPONENT PASSMAN: That's correct.

15 BY MS. PREBULA:

16 Q. And the -- that was also after she had
17 requested pay increases on several occasions,
18 correct?

19 A. That's correct.

20 Q. And you do not recall whether or not that was
21 after she requested the director's title or you do
22 now recall that?

23 A. I don't recall her requesting a director
24 title.

25 Q. When you told her that she had to work under

1 someone before she could move up into management,
2 what were you talking about if not a director's
3 title?

4 MR. GERAKITIS: Object to form.

5 DEPONENT PASSMAN: I rarely talk to people
6 about titles within the company. We're a fairly
7 flat organization. We talked a lot more about
8 roles and opportunities than we did titles.

9 BY MS. PREBULA:

10 Q. So what were you talking about if not the
11 director's title?

12 A. I was not talking about the director's title.

13 Q. So what were you talking about?

14 A. I was talking about gaining experience in
15 marketing so that she could become a marketing
16 executive.

17 Q. And that's not a director?

18 A. Not to me, it's not.

19 Q. What is it to you?

20 A. It's -- it's -- it is -- it is learning and
21 growing professionally.

22 Q. So what is a marketing executive if the next
23 step is not a director, what is it?

24 A. I'm terribly sorry, but I don't -- I don't
25 have a title for you.

1 Q. Well, when you said to her so that you can
2 become a marketing executive, what were you referring
3 to?

4 A. I was referring to becoming eventually a CMO.

5 Q. And so this investigation was after that
6 conversation as well, correct?

7 MR. GERAKITIS: Object to the form.

8 DEPONENT PASSMAN: Yes.

9 BY MS. PREBULA:

10 Q. The -- were you a party to any emails between
11 Fred Van Noy and Ms. Trawick while she was on
12 maternity leave?

13 A. Not that I recall.

14 Q. Okay. You do recall that Ms. Trawick took
15 maternity leave, right?

16 A. Paid maternity leave? Yes.

17 Q. Either one.

18 A. Yes.

19 Q. Wasn't she on bed rest for a while?

20 A. Yes.

21 Q. And then out after delivery of the baby?

22 A. Yes. But she was paid during that time.

23 Q. Right. Does that matter to you?

24 A. No.

25 Q. Okay. Do you recall how long she was out on

1 bed rest for the pregnancy?

2 A. No, I don't.

3 Q. Did you pay that at full salary or a reduced
4 salary?

5 A. I don't know.

6 Q. Okay.

7 A. I believe it was full.

8 Q. And maternity leave was paid at full or part
9 salary?

10 MR. GERAKITIS: Object to the form.

11 DEPONENT PASSMAN: I don't know. Again, I
12 believe it was full pay.

13 BY MS. PREBULA:

14 Q. Okay. Did -- is it your policy that in order
15 for a woman to take maternity leave, she must file a
16 formal written request?

17 MR. GERAKITIS: Object to the form.

18 DEPONENT PASSMAN: I don't recall a policy on
19 maternity leave. I'm sorry.

20 BY MS. PREBULA:

21 Q. You don't recall one way or the other?

22 A. I do not recall one way or the other.

23 Q. Okay. The -- and I asked you this and I don't
24 recall your answer. Do you know how long she was out
25 on bed rest?

1 A. I do not.

2 Q. Do you know how long she was out on maternity
3 leave?

4 A. I do not.

5 Q. Do you understand that Ms. Trawick had to work
6 during her maternity leave?

7 MR. GERAKITIS: Object to the form.

8 DEPONENT PASSMAN: I do not.

9 BY MS. PREBULA:

10 Q. And you didn't see the emails between Fred
11 Van Noy and her during the maternity leave period?

12 MR. GERAKITIS: Object to the form.

13 DEPONENT PASSMAN: I don't recall seeing
14 emails.

15 BY MS. PREBULA:

16 Q. Did you see any emails between her and Fred
17 Friedel during the maternity leave?

18 A. I don't recall seeing any.

19 Q. Did you visit Crystal at her house during her
20 maternity leave?

21 A. I did.

22 Q. And on one occasion, did you look over her
23 shoulder at her laptop and see that she was, in fact,
24 working on Carmike work during her maternity leave?

25 A. I questioned whether she was, yes.

1 Q. And you looked at her laptop?

2 A. I looked at the screen and I saw something on
3 it that, to me, looked like Carmike work.

4 Q. Carmike work. Are you aware that conference
5 calls were scheduled during her maternity leave?

6 MR. GERAKITIS: Object to the form.

7 DEPONENT PASSMAN: It's second-hand. But,
8 yes.

9 BY MS. PREBULA:

10 Q. What's your second-hand?

11 A. Just to hear afterwards that there were calls.

12 Q. And who'd you hear that from?

13 A. I believe it would have been Fred or Crystal.
14 Fred Van Noy or Crystal Trawick.

15 Q. And do you understand that Ms. Trawick had to
16 attempt to hire people while she was out on maternity
17 leave?

18 MR. GERAKITIS: Object to the form.

19 DEPONENT PASSMAN: No, I -- no.

20 BY MS. PREBULA:

21 Q. Do you -- are you aware that she conducted
22 interviews for a job position while she was on
23 maternity leave?

24 A. I'm aware of that.

25 Q. The day that you were at Ms. Trawick's house,

1 wasn't she having labor pains?

2 A. Not that I recall.

3 Q. You don't recall saying: I feel sorry for
4 you, poor you, poor thing?

5 A. No.

6 Q. You don't recall that she was having labor
7 pains --

8 A. No.

9 Q. -- while she was working on Carmike work?

10 A. No.

11 Q. The -- did you visit Ms. Trawick more than
12 once at her home while she was on maternity leave?

13 A. I don't know.

14 Q. Would your calendar show that?

15 A. Probably not.

16 Q. The -- other than the two discussions we
17 talked about briefly earlier where the glass ceiling
18 for women was discussed --

19 MR. GERAKITIS: Object to the form. Go ahead.

20 I want to make sure it's clear. Go ahead. Sorry.

21 BY MS. PREBULA:

22 Q. Other than the two discussions we talked about
23 earlier where the glass ceiling was discussed with
24 Ms. Trawick, did you have any other conversations
25 with her about it being difficult for women at

1 Carmike?

2 MR. GERAKITIS: Object to the form.

3 DEPONENT PASSMAN: In the discussions that we
4 had, I did not.

5 BY MS. PREBULA:

6 Q. Did you --

7 A. I did not say that I thought it was more
8 difficult for women at Carmike; nor at any time after
9 did I say that.

10 Q. Did you have any discussions with Ms. Trawick
11 about it being difficult for women at Carmike at all?

12 A. No.

13 Q. Do you -- with regard to the discussions on
14 the glass ceiling, I understand you deny the specific
15 statements but recall having the discussion with her;
16 is that fair?

17 MR. GERAKITIS: Object to the form.

18 DEPONENT PASSMAN: About the glass ceiling in
19 corporate America, yes.

20 BY MS. PREBULA:

21 Q. Okay. And did that -- did you have those
22 discussions on more than one occasion?

23 A. I don't believe so.

24 Q. Do you recall when Jim Lucas was hired at
25 Carmike?

1 A. No.

2 Q. Was he there when you became president?

3 A. He was.

4 Q. Did Jim Lucas have any discussions with you
5 with regard to promoting Ms. Trawick to director?

6 A. No.

7 Q. Did Jim Lucas -- excuse me -- did Mr. Van Noy
8 report to you that Jim Lucas had come to him and told
9 him that he should promote Trawick to director?

10 A. Not that I recall, no.

11 Q. Are you at all familiar with the Comdata
12 system?

13 A. Very, very vaguely.

14 Q. Okay. Did you use it?

15 A. Yes.

16 Q. Okay. And did -- did you use it to approve
17 expenses for the company?

18 A. Expenses of individuals?

19 Q. Correct. For the company.

20 A. Within the company, yes.

21 Q. And was your approval -- were your approvals
22 for your sea level employees only?

23 A. And my assistant.

24 Q. Okay.

25 A. Yes.

1 Q. And is it your understanding that all expenses
2 for the company --

3 A. Can I back up?

4 Q. Uh-huh. (indicating in the affirmative).

5 A. I'm sorry. The president of alternative
6 programming did not have a C in his title. He was
7 president of alternative programming, but I also
8 approved his expense reports.

9 Q. And that was a very short period of time
10 before the company was sold, wasn't it? I think just
11 a year or so.

12 A. Well, it was in excess of a year. It might
13 have been two years or so.

14 Q. Okay.

15 A. Yes.

16 Q. And it's your understanding for expenses to be
17 approved, that they had to go through that Comdata
18 system?

19 A. Not necessarily.

20 Q. What's the other way they could be approved?

21 A. They could be approved by paper.

22 Q. You also had a paper trail?

23 A. In some cases.

24 Q. What cases?

25 A. Where people didn't have access to the Comdata

1 system.

2 Q. And what were those situations?

3 A. They never occurred for my director boards. I
4 insisted that they use the Comdata.

5 Q. Okay. So what situations are you talking
6 about?

7 A. I was -- I was told Comdata was not one
8 hundred percent.

9 Q. By whom?

10 A. By our controller.

11 Q. And what was the other method of approval?

12 A. I would assume it would be the same method
13 that we used prior to adopting the Comdata system,
14 which I'm not sure how long we actually had it in
15 place. But it certainly wasn't the entire time of my
16 tenure.

17 Q. But someone had to sign off on lower
18 employee's expenses?

19 A. That would be correct.

20 Q. Who approved yours?

21 A. Mine were approved -- they were submitted to
22 the CFO and then they were reviewed, I believe, by
23 the board chairman.

24 Q. Okay.

25 A. Or the audit committee chairman. I'm not sure

1 which.

2 Q. So someone else had to sign off on all
3 expenses before they were approved?

4 A. That's correct.

5 Q. And that would include credit card -- company
6 credit card expenses?

7 A. Yes.

8 Q. Okay. So it would be the case that
9 Ms. Trawick could not approve her own expenses,
10 right?

11 A. That should be right.

12 Q. Somebody else had to sign off in order for
13 them to be paid?

14 A. Someone should have to sign off. That's
15 correct.

16 Q. Well, someone had to for the accounting to
17 issue the check, right?

18 A. Well, I didn't audit the accounting
19 department; but I would assume that's correct.

20 Q. That was your understanding?

21 A. Yes, that was my understanding.

22 Q. Okay.

23 A. Thank you.

24 Q. And the short version is that Crystal Trawick
25 couldn't write a check for her own expenses or

1 invoices for Carmike. She didn't have that
2 authority.

3 A. That's correct. She did not have that
4 authority.

5 Q. Did you participate at all in the
6 investigation that you described earlier of
7 Ms. Trawick with regard to expenditures?

8 A. I did not.

9 Q. Did you -- I'm trying to find the name. I'll
10 find the name at lunch. Did you participate in any
11 investigation of anyone -- any other employee in
12 regard to questioned expenditures while you were
13 president?

14 A. No.

15 Q. Are you aware of an investigation of any other
16 employee for expenditures while president?

17 A. Yes, but not directly.

18 Q. Who was that?

19 A. I believe it was a district manager in -- I
20 want to say Tennessee.

21 Q. Do you know his name?

22 A. Thad.

23 Q. Morton?

24 A. Morton, yes.

25 Q. And Thad Morton was male, correct?

1 A. Yes.

2 Q. And was he terminated with regard to
3 inappropriate expenditures?

4 A. He was not terminated with regard to
5 inappropriate expenditures.

6 Q. He was warned, right?

7 A. I don't recall the actions that were taken as
8 a part of that investigation.

9 Q. But you know he was not terminated?

10 A. I know he was not terminated.

11 Q. Okay. Did -- prior to November 2015, were
12 there any written instructions with regard to how
13 expenditures had to be approved and processed?

14 A. How expenditures?

15 Q. Correct?

16 A. I don't know. I would assume there were.

17 Q. What would -- what are you assuming? What
18 would they be?

19 A. As part of our policies and procedures, I
20 would assume the compliance department issued some
21 type of written communication regarding expenditures.

22 Q. Can you tell me what those were?

23 A. I cannot.

24 Q. Are you aware of any documents that you've
25 described prior to November of 2015?

1 A. I'm not.

2 Q. Are you aware of any written policies and
3 procedures prior to November of 2015 with regard to
4 credit card usage?

5 A. I am not.

6 Q. Are you aware of any written policies and
7 procedures at all with regard to sponsorships?

8 A. No.

9 Q. Are you aware of any written policies and
10 procedures with regard to expenses for community
11 involvement such as Chamber of Commerce events?

12 A. No.

13 Q. Are you aware of any written policies or
14 procedures for client entertainment?

15 A. No.

16 Q. Are you aware of any written policies or
17 procedures for studio entertainment?

18 A. No.

19 Q. Are you aware of any written policies or
20 procedures with regard to airline tickets?

21 A. No.

22 Q. Okay. Are you aware of any written policies
23 or procedures with regard to any expenditures made by
24 Carmike?

25 A. No.

1 Q. Okay.

2 MS. PREBULA: All right. I think that's a
3 good place to break for lunch. We've been going a
4 little over an hour.

5 MR. GERAKITIS: Okay.

6 (Lunch break)

7 (Upon resuming)

8 MS. PREBULA: Okay. We're back on.

9 BY MS. PREBULA:

10 Q. Did the company have any policy that any
11 written request had to be made for short term
12 disability leave?

13 A. I don't know.

14 Q. Did the company have any policy that any
15 written request had to be made for FMLA leave?

16 A. I don't know.

17 Q. Have you ever seen any written policies to
18 that effect?

19 A. I have not.

20 Q. Who is Terra Hardwick?

21 A. She is in the IT department -- or was in the
22 IT department. I don't know what her title was.

23 Q. Did Terra Hardwick have a baby before Crystal
24 Trawick?

25 A. I don't know.

1 Q. Did you have a discussion with Crystal Trawick
2 about Terra Hardwick's pregnancy when you found out
3 that Crystal was pregnant?

4 A. About Terra's pregnancy?

5 Q. Correct.

6 A. No, ma'am.

7 Q. Did you tell Crystal Trawick not to be like
8 Terra Hardwick?

9 A. I don't recall that at all.

10 Q. Did you have any discussion with Ms. Trawick
11 as to the effect that children were going to have on
12 her and her work performance?

13 A. No.

14 Q. You deny that?

15 A. I did not have a discussion with her about how
16 it would affect her work performance.

17 Q. I asked you if you knew how long Ms. Trawick
18 had been out on maternity leave and I think you said
19 you don't recall; is that right?

20 A. That is correct.

21 Q. Do you remember when she was out on maternity
22 leave?

23 A. I don't remember with certainty. I think it
24 was in the early summer or late spring of 2014.

25 Q. Okay. Did -- were you on a call with her with

1 theater managers shortly after her son was born,
2 couple of weeks after her son was born?

3 A. I don't recall that.

4 Q. The -- in 2014, was a male division manager
5 terminated for cause?

6 A. Summer of 2014?

7 Q. No, just 2014. I don't know if it was in the
8 summer or not. But in 2014, was a male division
9 manager terminated for cause?

10 A. I don't recall --

11 Q. You don't recall that at all?

12 A. -- if it was for cause. I recall a division
13 manager leaving the company.

14 Q. And who was that?

15 A. Thomas Bridgman.

16 Q. And was he given a year's severance?

17 A. I don't know. I don't recall.

18 Q. You didn't have to approve that?

19 A. I probably did; but I don't recall it.

20 Q. And where was Thomas Bridgman, what physical
21 location?

22 A. At the time of his termination or now?

23 Q. Correct.

24 A. At the time of his termination, I believe he
25 lived in Columbus.

1 Q. Georgia?

2 A. Georgia.

3 Q. Okay. And when Mr. Morton was terminated --
4 excuse me. When Mr. Morton was investigated, was it
5 determined that he had, in fact, taken Carmike funds?

6 A. I don't know that.

7 Q. Would you have not have had to approve that
8 one as well?

9 A. Approve him taking Carmike funds?

10 Q. No. Approve the fact that there was no action
11 taken against him and he was allowed to stay at the
12 company?

13 A. No, I would not.

14 Q. You did not have to approve a district
15 manager?

16 A. I did not.

17 Q. Who would have approved that?

18 A. Can you tell me what year we're talking about?

19 Q. I believe that was -- I want to say that was
20 in 2014 as well, but I could be -- I don't know for
21 sure.

22 A. Yeah. The reason I ask is there was a point
23 in time that there was a position between the
24 division managers and Fred. That position was
25 eliminated. And so I think during that period of

1 time, that general manager role was not present. So
2 it would have been Fred Van Noy.

3 Q. Then when you were made aware of the
4 investigation into Crystal, did you make any notes?

5 A. No, ma'am.

6 Q. Okay. Other than the people you've talked to
7 me about, did you -- meaning Fred Hare, Fred Van Noy,
8 and Dan Ellis, did you discuss --

9 MR. GERAKITIS: Object.

10 DEPONENT PASSMAN: Richard Hare.

11 BY MS. PREBULA:

12 Q. -- did you discuss the investigation with
13 anyone else?

14 A. No.

15 Q. Okay. Did -- as part of that investigation,
16 was Shannon Sailors also investigated?

17 A. I don't know.

18 Q. Was Crystal (SIC) De La Cruz investigated?

19 A. I don't know.

20 MR. GERAKITIS: Object to the form.

21 BY MS. PREBULA:

22 Q. Were you -- when you were made aware of the
23 investigation into Crystal Trawick, did you request
24 that Shannon Sailors, who approved her expenses, also
25 be investigated?

1 A. I did not.

2 Q. And did you make any requests at that time
3 that -- I always want to call her Crystal -- Lisa
4 De La Cruz be investigated because she approved some
5 of those expenses as well?

6 A. I did not.

7 Q. Do you know whether either Shannon Sailors or
8 Crystal (SIC) De La Cruz were reprimanded as a result
9 of that investigation into charities and expense
10 reports?

11 A. I do not.

12 Q. Do you know -- you do know that neither
13 Sailors nor De La Cruz were terminated, correct?

14 A. I know neither of them were terminated.

15 Q. Was there any written policy guidelines that
16 any sponsorships had to be with entities that were
17 approved as 501(c)(3) charities under the tax code?

18 A. No, I don't recall reading such policy.

19 Q. Okay.

20 (Brief break)

21 (Upon resuming)

22 BY MS. PREBULA:

23 Q. Let me show you what's been marked as
24 Defendant's 45.

25 MR. GERAKITIS: Plaintiff's 45?

1 MS. PREBULA: Excuse me. Plaintiff's 45.

2 MR. GERAKITIS: Okay.

3 BY MS. PREBULA:

4 Q. Do you recognize that as the payroll
5 authorization form that Carmike used?

6 A. It's a different size.

7 Q. It is?

8 A. But it looks like a form that we would use.

9 Q. Okay. And you see that this is dated 10-2012
10 and it's for Crystal Trawick moving into marketing?

11 A. I do see that.

12 Q. And you see that there's no pay increase?

13 MR. GERAKITIS: Object to the form.

14 BY MS. PREBULA:

15 Q. I mean, it actually shows that her present
16 rate of pay is zero. But it does show that there's
17 no increase, correct?

18 MR. GERAKITIS: Object to the form.

19 DEPONENT PASSMAN: I see that there is no
20 percentage increase indicated on it, yes.

21 BY MS. PREBULA:

22 Q. Okay. And you indicated you would have to
23 approve those. Is one of the initials at the top
24 your initials?

25 A. No, I don't think so.

1 Q. Whose initials are at the top?

2 A. I believe what I said earlier about approving
3 was if they crossed certain thresholds, I would have
4 to approve them. This would clearly not be one that
5 I would normally approve.

6 Q. Whose initials are at the top?

7 A. I'm not a hundred percent sure. It looks like
8 Fred's -- Fred Van Noy's and perhaps Terrell Mayton.

9 Q. Do you recognize those as --

10 A. No, I don't recognize their signatures or
11 initials all that well. They're not all that
12 legible.

13 Q. Is there anyone else who would have approved
14 this transfer?

15 A. No, not that I'm aware of.

16 Q. Let me show you what's been marked as
17 Plaintiff's Exhibit 46. This also is a payroll
18 authorization form for Crystal Trawick. And you see
19 it's for August of 2013. Do you see that?

20 A. I see August 15th crossed out to 16th, 2013.

21 Q. Right.

22 A. Yes, I do see that.

23 Q. And there is -- it appears that she got a
24 reduction in pay, but it shows an increase in the
25 percentage column. Do you see that?

1 A. No. Would you explain it to me?

2 Q. Well, the typed in numbers are stricken and
3 reduced for her current -- her present rate. Do you
4 see that?

5 A. For her present and new rates?

6 Q. Uh-huh. (indicating in the affirmative).

7 A. Yes, I do see that. It looks like a
8 correction.

9 Q. And can you tell me whose signatures -- whose
10 initials are at the top of that page?

11 A. That -- it could be mine. I don't write very
12 legibly either, but I'm not sure. It was either Fred
13 or mine.

14 Q. And to the left with the date?

15 A. I think that would be Sadie Marshall.

16 Q. And how about the bottom after the back pay
17 entry?

18 A. I think that would be Sadie Marshall as well.
19 It could be someone else. But Sadie is head of the
20 HR group.

21 Q. Okay.

22 A. And would ordinarily sign these kinds of
23 things.

24 Q. And on this particular form, there's a partial
25 copy of a calendar which purports to be a vacation

1 record. Are you familiar with that form?

2 A. I am not.

3 Q. Have you ever seen that form before?

4 A. I have not.

5 Q. Okay. Do you know what it purports to show?

6 A. I do not.

7 Q. The -- would there be a similar calendar for
8 when Ms. Trawick took maternity leave?

9 A. I don't know.

10 Q. Was it a policy and procedure of Carmike to
11 record maternity leave as separate from any other
12 kind of leave?

13 A. I don't know.

14 Q. Let me show you what I have marked as
15 Plaintiff's Exhibit 47. Again, this is a payroll
16 authorization form for Ms. Trawick. And can you tell
17 me -- this is for 2014. August of 2014, right?

18 A. Yes, it appears so.

19 Q. And can you tell me whose initials are at the
20 top right?

21 A. That looks like Fred Van Noy.

22 Q. Fred Van Noy. And Sadie Marshall's are to the
23 left?

24 A. Again, I'm speculating but I would assume
25 those are Sadie Marshall's.

1 Q. That's whose you think you are -- whose you
2 think --

3 A. That's who I think it would be.

4 Q. Got it. And then how about to the left of the
5 changed numbers, again the typewritten numbers are
6 stricken and reduced.

7 MR. GERAKITIS: Object to the form.

8 DEPONENT PASSMAN: Once again, it looks like
9 the present rate was corrected. It looks like it
10 must have been an error and it was corrected. And
11 then, of course, the new rate.

12 BY MS. PREBULA:

13 Q. And whose initials are to the left of that,
14 the changes?

15 A. That looks like Fred Van Noy.

16 Q. Okay. And then this shows a three percent
17 increase, right?

18 A. That's correct.

19 Q. And whose initials are at the bottom after the
20 back pay due?

21 A. Once again, I'm speculating that's Sadie
22 Marshall.

23 Q. And on both Plaintiff's 46 and 47 under the
24 reason that says: Doing a very good job, annual
25 review. Right?

1 A. It does.

2 Q. The -- I don't know why there's a second page
3 to that, but that's the way it printed. Did your
4 form normally consist of one page?

5 A. I believe so.

6 Q. Okay. It may just be a ghost. You know how
7 that will print.

8 A. Yeah.

9 Q. So do you -- is it your understanding that
10 these forms where they are corrected accurately
11 reflect Ms. Trawick's salary in 2013 and 2014?

12 A. I would assume so.

13 Q. You don't know?

14 A. I don't know.

15 Q. Can you explain why both the 2013 and 2014
16 originally had incorrect numbers on them?

17 A. I cannot.

18 Q. Is there a reason why that was not retyped, if
19 you will?

20 A. I don't know.

21 Q. Are you familiar with the income that
22 Mr. Sailors was making during this same period?

23 A. I am not.

24 Q. The -- was there any kind of corporate chart
25 that indicated salary ranges for different levels of

1 employees?

2 A. I don't believe so.

3 Q. Was there any standard or policy for what the
4 pay would be for any level of employee?

5 A. I don't know.

6 Q. For example, was there a chart that showed or
7 a policy that showed a director's salary would be
8 between X and Y, that that was the salary range?

9 A. Not that I'm aware of.

10 Q. Would that be true for anybody else in the
11 marketing department that there was no official
12 salary range for any particular job function?

13 A. I don't know.

14 Q. Are you aware of any?

15 A. I'm not aware of any.

16 Q. Was there a salary range for clerical workers?

17 A. Not that I'm aware of.

18 Q. Okay. And I'm presuming that there would not
19 be a salary range for any executive?

20 A. I wouldn't make that assumption.

21 Q. Okay.

22 A. We had annual -- we had outside -- the board
23 of directors had an outside consultant that reviewed
24 salary ranges and compared them to other public
25 companies in the market place.

1 Q. For executives?

2 A. For only the executives, yes.

3 Q. And was there a published list of salary
4 ranges for each position?

5 A. No.

6 Q. Did -- before I mark this, let me ask you a
7 couple of questions about it because I don't think
8 it's relevant. This is an employee handbook that was
9 produced in the case and it starts with Carmike
10 number 2947. If you -- and this is an employee
11 handbook that shows --

12 MR. GERAKITIS: Do you have a copy?

13 MS. PREBULA: Oh, I'm so sorry. Watch the
14 staples. Something is going on with these. I
15 don't know why it did it that way.

16 BY MS. PREBULA:

17 Q. If you would look at numbered page one.

18 MR. GERAKITIS: Can I just check one thing?

19 MS. PREBULA: The regular number one.

20 MR. GERAKITIS: And we haven't marked this
21 yet.

22 MS. PREBULA: We haven't marked it yet because
23 I don't think this applies and I'm just going to
24 ask him before -- no need to mark it if it doesn't
25 apply.

1 DEPONENT PASSMAN: Not small letter or small

2 --

3 BY MS. PREBULA:

4 Q. No, the regular number one. Okay. At the
5 bottom, it says that this manual -- if you have any
6 questions about this policy and procedures, you
7 should contact the theater manager or the human
8 resource director.

9 And I think that this manual applies to
10 theater employees and not to corporate employees.
11 And I want to show you why. That same reference
12 appears on pages seven, 18 and 25 and two. And then
13 you also produced, meaning Carmike, a corporate
14 employee policies manual which I will show you.

15 Am I correct -- and that started at Carmike
16 number 3000 -- am I correct that the document labeled
17 employee handbook only applies to theater employees
18 and the document that says corporate employee
19 policies manual applies to corporate office
20 employees?

21 A. Would you reask your question? I'm sorry.

22 Q. Sure. Am I correct that the document labeled
23 employee handbook does not apply to corporate office
24 employees. And the document labeled corporate
25 employee policies manual does apply to corporate

1 office employees?

2 A. That would appear so.

3 Q. Okay. So the document labeled employee
4 handbook starting on page 2947 would not apply to
5 Crystal Trawick from 2012 to her termination in 2015?

6 A. That would appear so.

7 Q. Okay. So just let me not mark that. Save
8 that tree. And let me mark the corporate employee
9 manual as Plaintiff's Exhibit 48.

10 Okay. And you recognize this corporate
11 employee policies manual as a document that Carmike
12 prepared or had prepared?

13 A. It looks familiar.

14 Q. Okay. It says on the front it was effective
15 May of 2011. Do you see that?

16 A. I do.

17 Q. Was this revised at any time between May of
18 2011 and November of 2015?

19 A. I don't know.

20 Q. Are you aware of any other employee policies
21 manual that would have applied to Ms. Trawick from
22 2012 through November 2015, other than Plaintiff's
23 48?

24 A. Does this include the IT policies and
25 procedure manual?

1 Q. It does not. There is an IT policies and
2 procedure manual you produced as well.

3 A. Okay. Does include the code of conduct?

4 Q. It does not. So those are two additional
5 documents I'm going to ask you about. There is also
6 an IT policies manual, right?

7 A. Yes, I believe so.

8 Q. Okay. And there is a code of conduct.

9 A. I believe so.

10 Q. All right. Then we'll just go ahead and
11 identify those and then we'll go back and talk about
12 them.

13 So let me show you what's previously been
14 marked as Plaintiff's Exhibit 39. Is that the IT
15 manual you're talking about?

16 A. It appears so.

17 Q. Okay. And let me show you what's previously
18 marked as Plaintiff's Exhibit 37 and ask you if
19 that's the code of conduct you were referencing?

20 A. Yes, I believe so.

21 Q. Okay. So knowing there's an IT manual and
22 knowing there's a code of conduct, my question is is
23 there any other employee policies manual that would
24 have applied to Crystal Trawick between 2012 and
25 2015?

1 A. I don't recall any other corporate policies
2 manual.

3 Q. Were there any other written policies and
4 procedures that would have applied to Ms. Trawick
5 between 2012 and 2015?

6 A. I don't know.

7 Q. Okay. Let's look at Plaintiff's 48. This
8 document, if you'll look at page three, contains an
9 Equal Employment Opportunity policy. Do you see
10 that?

11 A. I do.

12 Q. Is this the only EEO policy that Carmike had?

13 A. I don't know.

14 Q. All right. If you will look at the -- under
15 -- let's still look at page three. Under the EEO
16 policy in the last paragraph of the policy, it says:
17 Any person that has a question or concern with regard
18 to any type of discrimination or harassment must
19 report it to his or her supervisor, to human
20 resources or to the help line. Do you see that?

21 A. I do.

22 Q. Do you understand that -- was that your
23 understanding of how reporting was to occur?

24 A. Yes.

25 Q. Okay. Did -- and you see the sentence at the

1 end of there that says: There will be no
2 retaliation against or harassment or intimidation of
3 any employee who makes a complaint in good faith. Do
4 you see that?

5 A. I do.

6 Q. Did you understand that was the policy?

7 A. Yes.

8 Q. The policy also says at the top, if you'll
9 look at the second, it says: All employment
10 decisions, et cetera, are to be made without regard
11 to --- and it lists categories. And then it says:
12 without regard to any other characteristic which is
13 protected under federal or state law. Do you see
14 that?

15 A. Yes.

16 Q. What's that referring to?

17 A. I would say it's referring to
18 nondiscrimination.

19 Q. What's the "any other characteristic"?

20 A. I don't know.

21 Q. So did you understand this policy to be that
22 all employment decisions including hiring, promotion
23 and compensation and termination were to be made
24 without regard to age, race, gender, pregnancy, et
25 cetera?

1 A. Yes.

2 MR. GERAKITIS: I object to the form.

3 BY MS. PREBULA:

4 Q. Okay. Did you understand that any promotion,
5 evaluation, compensation, access to benefits, or
6 termination were to specifically be made without
7 regard to gender?

8 A. Yes.

9 Q. Okay. Did -- let's look at page six. Pages
10 six and seven contain sexual harassment policy. Do
11 you see that?

12 A. I see no harassment policy.

13 Q. Okay. Which would include sexual harassment.
14 You would agree with that?

15 A. (Witness perusing documents). Yes.

16 Q. Okay. Did -- is there any other harassment
17 policy other than this one that Carmike had between
18 2012 and 2015?

19 A. I don't know. Not that I'm aware of.

20 Q. Now, you note that in the harassment policy --
21 see the bullet points? It says on page six that:
22 Carmike will provide discrimination free work place.
23 Do you see that? The first bullet point.

24 A. Yes.

25 Q. And it says: Carmike will provide an

1 opportunity to present any complaint to the
2 appropriate company representative. Do you see that?

3 A. Yes.

4 Q. And those appropriate company representatives
5 included supervisors and their supervisor's
6 supervisors; right?

7 A. I would assume so.

8 Q. Is that your understanding?

9 A. Yes.

10 Q. Okay. And then it also says: Carmike will
11 provide a full and partial and prompt investigation
12 by management in conjunction with human resources.
13 Do you see that? Third bullet point.

14 A. Yes.

15 Q. Then it says: Appropriate corrective action
16 if necessary, right?

17 A. Yes.

18 Q. And then: Freedom from reprisal and
19 retaliation in making a good faith complaint is also
20 one of the bullet points, right?

21 A. That we will endeavor. Yes.

22 Q. Now, those exist under the non-harassment
23 policy, right?

24 A. Yes, they appear to.

25 Q. But if you turn back to page three, those same

1 provisions do not exist under the EEO discrimination
2 policy, correct?

3 MR. GERAKITIS: Object to form.

4 DEPONENT PASSMAN: I'm not sure whether
5 they're included or not.

6 BY MS. PREBULA:

7 Q. They're not -- they're not on page three, are
8 they?

9 A. Those identical bullet points are not on page
10 three.

11 Q. And page three doesn't include any reference
12 to section 3.01, no harassment; correct?

13 MR. GERAKITIS: Object to the form.

14 DEPONENT PASSMAN: I don't see a reference to
15 harassment.

16 BY MS. PREBULA:

17 Q. So when you told me that there would be an
18 investigation if Crystal had made a complaint of pay
19 and title being discriminatory because she was a
20 woman, what policy were you referring to?

21 A. I don't know that I was referring to a policy.
22 I said that it would be reported to HR and
23 investigated.

24 Q. And in this particular case, there was no
25 investigation, to your knowledge, of any complaint by

1 Crystal Trawick?

2 A. That's correct.

3 Q. Did -- was there any other written policy that
4 you were referring to when you said there would be an
5 investigation of discrimination claims?

6 A. No.

7 Q. Would you consider taking -- a senior male
8 employee taking a younger female employee out for a
9 dinner and drinks to be prohibited under either of
10 these policies?

11 A. No.

12 Q. Would you consider a male employee attempting
13 to kiss a younger female employee to be a violation
14 of any of these policies?

15 A. Not necessarily.

16 Q. What does that mean? When is it okay?

17 A. Consensual. If a complaint were made in that
18 regard, I would refer it to HR and legal to
19 investigate. They would have the skill set and
20 experience necessary to make a determination as to
21 whether that was harassment.

22 Q. If it was an unwelcome attempt to kiss a
23 female employee by an older male employee, would that
24 be considered harassment?

25 A. It might be.

1 Q. Did -- I'm so sorry. It's pollen this time.
2 The -- if you look on page seven, the sexual
3 harassment policy specifically includes unwelcomed
4 physical contact; correct?

5 A. Yes.

6 Q. Okay. Excuse me again.

7 On page eight of Plaintiff's Exhibit 48,
8 there's a code of conduct. Do you see that?

9 A. Yes.

10 Q. Did the code of conduct -- and we'll look at
11 it in just a second -- apply to all employees?

12 A. I believe it did, yes.

13 Q. Okay. So you show in that 3.02 regarding code
14 of conduct that Carmike has a website,
15 www.carmike.com. Do you see that? Last paragraph.

16 A. Yes.

17 Q. Do you know who hosted that website?

18 A. No.

19 Q. Okay. Did you also have prior to this, a
20 website lma.carmike.com?

21 A. I don't know.

22 Q. Do you know if your email came through that
23 website to Outlook or through a different provider?

24 A. I don't know.

25 Q. Does the carmike.com website still exist?

1 A. I don't know.

2 Q. You'd said earlier that Carmike no longer
3 exists. Is it your understanding that the entity
4 itself is out of existence?

5 A. I believe it is, but I don't know.

6 Q. Is it your understanding that all theaters
7 have been changed from Carmike to AMC?

8 A. I'm sorry. The ownership or the signage?

9 Q. No, no. The signage.

10 A. No, that's not my understanding.

11 Q. So there are still some Carmike theaters
12 sitting out there?

13 A. I don't know whether there are or not.

14 Q. Okay. Okay. On page 10, the top 3.05 has
15 electronic communications provision, if you will,
16 that just incorporates the other handbook which you
17 identified earlier.

18 A. Yes, it seems to.

19 Q. Do you see that?

20 A. Yes.

21 Q. Okay. The -- are you aware of any misuse of
22 Carmike's email, voicemail, telephone or computer
23 systems that was reported to Carmike during your
24 employment as president?

25 A. The only thing I can think of is when Crystal

1 left, she kept without permission some devices. I
2 can't think of any other employee separation or any
3 other misuse of employees while employed at Carmike.

4 Q. Did anyone ask Crystal to turn in her laptop
5 or computer when she left?

6 A. I don't know.

7 Q. Do you have any understanding as to whether or
8 not Crystal understood those belonged to her
9 personally?

10 A. I do not.

11 Q. The -- if you would look at page 12, there is
12 a specific provision for children visiting in the
13 work place. Do you see that?

14 A. Yes, I do.

15 Q. And it was the norm for employees to
16 occasionally bring their children to the office,
17 correct?

18 A. Norm and occasionally, it certainly was
19 permitted.

20 Q. Didn't happen every day.

21 A. That's correct.

22 Q. Okay. But various employees, including
23 Ms. Trawick, Mr. Sailors, Ms. De La Cruz, would bring
24 their kids to the office?

25 A. Yes, that's correct.

1 Q. Mr. Hare brought his kids to the office on
2 occasion.

3 A. I don't know that.

4 Q. And that was not -- it was a permitted event.

5 A. Yes.

6 Q. If you will. Okay.

7 On the bottom of page 12, it notes that there
8 is a progressive discipline policy in section 3.08.
9 Do you see that?

10 A. I do.

11 Q. All right. And the procedure calls for four
12 steps: For verbal warning, written warning, final
13 written warning, and termination. Do you see that?
14 One, two, three, four.

15 MR. GERAKITIS: You're reading on procedure?

16 MS. PREBULA: Uh-huh. (indicating in the
17 affirmative). It's the only one, two, three, four
18 on the page.

19 MR. GERAKITIS: Okay.

20 DEPONENT PASSMAN: Yes, I see it.

21 BY MS. PREBULA:

22 Q. So the first occasion, verbal warning. And
23 you document it in the file, right? That's what
24 documented means?

25 A. Yes.

1 Q. The second occasion, written warning. Do you
2 see that?

3 A. I do.

4 Q. And third occasion, final written warning. Do
5 you see that?

6 A. I do.

7 Q. And fourth occasion, termination. Do you see
8 that?

9 A. Yes.

10 Q. And it also says that you could proceed right
11 to the final procedure for serious misconduct, right?

12 A. Would you say that again?

13 Q. That -- I'm looking at the sentence under the
14 four numbers. It says: Serious misconduct could
15 result in final written warning or termination.

16 A. Yes.

17 Q. Okay. Ms. Trawick had no written warnings in
18 her file at all, correct?

19 A. I don't know.

20 Q. You've not looked at her personnel file?

21 A. I have not.

22 Q. Are you aware of any written warnings that was
23 in Ms. Trawick's personnel file?

24 A. I am not.

25 Q. If there had been a written warning in her

1 personnel file, would Carmike have produced it?

2 A. I don't know. I would assume so.

3 Q. Are you aware of whether Mr. Morton got
4 written warnings when he was retained and not
5 terminated when there was alleged misuse of funds by
6 him?

7 A. I am not.

8 Q. Was it Carmike's general policy to follow the
9 progressive discipline policy and not go directly to
10 termination?

11 A. I don't know.

12 Q. Respectfully, you're the president of the
13 company. You don't know if the company followed that
14 policy?

15 A. I would assume so, but I don't know.

16 Q. The -- if you'll turn to page 18, I'm looking
17 at section 4.07 --

18 A. Family and medical leave?

19 Q. Right. Which provides family and medical
20 leave. The -- so you know that Carmike was large
21 enough, it offered FMLA leave, right? It had to.

22 A. I see that.

23 Q. And that that FMLA leave specifically includes
24 birth in the first bullet point?

25 A. It's talking about unpaid leave, yes.

1 Q. No, the first types of family medical leave.

2 A. It says all eligible employees -- I'm just
3 trying to read to get to the first option or first --
4 an eligible employee may take up to 12 work weeks of
5 unpaid leave during the 12 month period for the
6 following reasons. Is that what you're referring to?

7 Q. Right. And I'm saying that birth was one of
8 the types of family medical leave listed.

9 A. It is one of types of unpaid leave listed.

10 Q. Okay. And the -- then on page 19, the first
11 full paragraph says that: The family medical leave
12 for the birth of a child had to occur within the 12
13 months of the birth or placement, right?

14 MR. GERAKITIS: Object to the form.

15 DEPONENT PASSMAN: It does say that.

16 BY MS. PREBULA:

17 Q. Okay. And the -- on page 29, the notice
18 provision provides that --

19 A. I'm sorry. Where are you?

20 Q. Page 20. I said 25. Page 20. It says: An
21 employee who wants to take family and medical leave
22 ordinarily must provide his or her supervisor with at
23 least 30 days notice of the need for leave if the
24 need is foreseeable. Do you see that?

25 A. No, ma'am.

1 Q. First sentence?

2 A. I'm having trouble catching up to you.

3 Q. Okay.

4 A. Under compensation and benefits?

5 Q. Under notice and certification.

6 A. Oh.

7 Q. The first sentence on the page.

8 A. Yes, I see that.

9 Q. It does not say the employee has to submit
10 anything in writing, does it?

11 A. Not in that sentence, no.

12 Q. In fact, the second sentence says: It is then
13 the supervisor's responsibility to submit such notice
14 to the human resources director, correct?

15 A. It does.

16 Q. And then at the bottom, compensation and
17 benefits, the section --

18 A. Yes.

19 Q. -- it says: Generally FMLA leave is unpaid
20 leave. However, employees may elect to use accrued
21 vacation, sick leave, or special leave to receive
22 compensation during the period of leave; right?

23 A. It does say that.

24 Q. All right. Did -- and then it goes on in the
25 last sentence of that paragraph -- next to the last

1 -- no, I think it's the last sentence in that
2 paragraph to discuss if an employee is receiving
3 short term disability benefits, et cetera, that it
4 runs concurrently with family medical leave. Do you
5 see that? The last sentence.

6 A. I do see the last sentence.

7 Q. Did Carmike treat maternity leave the same as
8 it treated short term disability leave?

9 A. I don't know.

10 Q. So when you made the point that Ms. Trawick's
11 FMLA leave was paid, it was consistent with this
12 policy on page 20, wasn't it?

13 A. I didn't -- I didn't say it was FMLA leave. I
14 said she had --

15 Q. You said maternity leave.

16 A. -- I said she was paid during her maternity
17 leave, yes.

18 Q. And that was consistent with this policy noted
19 on page 20, correct?

20 MR. GERAKITIS: Object to form.

21 DEPONENT PASSMAN: I don't know if it's
22 consistent with this statement or not.

23 BY MR. PREBULA:

24 Q. You don't know if her paid maternity leave was
25 consistent with her ability to choose accrued

1 vacation, sick leave or special leave to receive
2 compensation during a period of leave?

3 A. No, I don't.

4 Q. Are you aware of any policy that requires the
5 employee to request in writing that they be able to
6 use their accrued vacation, sick leave, or special
7 leave to receive compensation during maternity leave?

8 A. No, I'm not.

9 Q. And this document does not say that, does it?

10 A. I don't see it in the pieces that we have
11 looked at.

12 Q. Does Carmike have -- if you'll look at the
13 last page, page 48. Does Carmike have an
14 acknowledgement form signed by Crystal Trawick?

15 A. I don't know.

16 Q. Where would that be maintained?

17 A. I don't know. I would assume it would be
18 maintained in the HR department.

19 Q. Let's look at your code of conduct which is
20 Plaintiff's Exhibit 37. Can I see it one second? I
21 think my copy may be different, I just want to make
22 sure I've got the same thing here. Yeah, it just
23 looks different because it's darker.

24 The -- you'll note that on the last page of
25 the document, there's also a compliance and

1 disclosure statement?

2 A. I see that.

3 Q. And the compliance and disclosure statement
4 says that: Every director and employee is required
5 to comply and failure to do so may require
6 disciplinary action. Do you see that? Third
7 paragraph.

8 A. Yes.

9 Q. And then the fourth paragraph says: If I
10 become aware of or suspect a violation or possible
11 violation of our code, I will inform my supervisor,
12 human resource director, the compliance officer, or
13 business ethics committee. Do you see that?

14 A. Yes.

15 Q. And it says: Currently, I'm not aware of any
16 violation or possible violation of our code or other
17 company policy. Do you see that?

18 A. I do.

19 Q. Did you sign this every year, 2012 to 2015?

20 A. I believe I did.

21 Q. Did Crystal Trawick sign this every year?

22 A. I don't know.

23 Q. Do you have any copies of her signing this
24 statement?

25 A. I do not.

1 Q. Where would they be kept?

2 A. I'm not certain, but I would expect either in
3 the general counsel's office or HR.

4 Q. When Crystal Trawick discussed with you the
5 pay issue and the glass ceiling issue, did you not
6 consider that to be a possible violation of the code
7 of company policy?

8 MR. GERAKITIS: Object to the form.

9 DEPONENT PASSMAN: I did not.

10 BY MS. PREBULA:

11 Q. Did -- and so you didn't report it under this
12 code of conduct, correct?

13 A. That is correct.

14 MS. PREBULA: I apologize. Let's just take a
15 five minute break and let me see if I can get rid
16 of this. It's 2:00 anyway.

17 (Brief break)

18 (Upon resuming)

19 BY MS. PREBULA:

20 Q. Okay. Let's go back on. We were looking at
21 Plaintiff's 37. If you would look at the last
22 sentence -- excuse me -- the last paragraph on the
23 first page, it says: Insensitivity to or disregard
24 of these policies will constitute an important
25 element in the evaluation of employee for attention,

1 assignment and promotion. Do you see that?

2 A. I do.

3 Q. Any conduct of failure to report any conduct
4 in violation of our code may be grounds for
5 disciplinary action up to and including termination.
6 Do you see that?

7 A. I do.

8 Q. Would you consider that your lack of response
9 to Ms. Trawick talking to you about a glass ceiling
10 and pay raise was insensitivity?

11 MR. GERAKITIS: Object.

12 DEPONENT PASSMAN: I would not.

13 BY MS. PREBULA:

14 Q. You would not.

15 A. No.

16 Q. And you were certainly not disciplined for not
17 reporting that after this lawsuit was filed, correct?

18 A. I was not.

19 Q. The corporate secretary is, I believe you said
20 Dan Ellis at the time in November of 2015?

21 A. That's correct.

22 Q. And on page three, this code of conduct
23 charges the corporate secretary with the ultimate
24 authority to determine applicability, et cetera. Do
25 you see that, paragraph B-1?

1 A. I'm looking at it. Yes.

2 Q. So the same person who investigated Crystal
3 Trawick, recommended to you that Crystal Trawick be
4 terminated is also charged with deciding whether or
5 not your failure to report would be a violation of
6 these policies; correct?

7 MR. GERAKITIS: Object to the form.

8 DEPONENT PASSMAN: I don't believe so. And
9 the reason I don't believe so is because I believe
10 he would have a responsibility to go to the board
11 of directors if there were an issue on me. I
12 believe that would be the "if necessary".

13 But, yeah, he would have the ultimate
14 authority.

15 BY ME. PREBULA:

16 Q. To make all those decisions, correct?

17 A. And if necessary with the board.

18 Q. The -- when you -- start over.

19 When AMC purchased the stock of Carmike, your
20 stock was bought out; correct?

21 A. That's correct.

22 Q. Did you sign a severance agreement with AMC?

23 A. I don't know if it was labeled severance
24 agreement, but I did sign an agreement -- a
25 separation agreement.

1 Q. Separation agreement?

2 A. I don't recall what it was called, but I did
3 sign one.

4 Q. Did you get severance pay?

5 A. I am receiving severance pay as we speak.

6 Q. Does your agreement provide that you cannot
7 voluntarily testify against Carmike?

8 A. I don't know if it does or not.

9 Q. Have you been told that if you testified in
10 favor of Carmike -- excuse me -- in favor of Crystal
11 Trawick that your separation pay will be affected?

12 A. No, I have not.

13 Q. Do you know if the form of separation
14 agreement you signed is the same as any other
15 director or executive of AMC -- excuse me -- Carmike
16 signed when they did not continue with AMC?

17 A. I do not know.

18 Q. Okay. Did you ever attend any community
19 events that Ms. Trawick set up on behalf of Carmike?

20 A. I'm not sure what you mean by community events
21 that she set up. You mean where Carmike was in
22 attendance or a sponsor or --

23 Q. Either one.

24 A. I'm not sure what you mean.

25 Q. Either one.

1 A. Yes, I attended several.

2 Q. Did you consider that to be a violation of
3 your code of conduct?

4 A. I do not.

5 Q. So let's look at Plaintiff's Exhibit 39, which
6 you have previously identified as the IT policy.

7 A. Yes.

8 Q. The -- it shows on the third page in that
9 doesn't appear to be -- well, it's numbered 519 at
10 the bottom -- that the document was revised several
11 times but the last revision was February of 2013. Do
12 you see that?

13 A. I do see that.

14 Q. Okay. Are you aware of any revisions to this
15 policy from February of 2013 through November of
16 2015?

17 A. I am not aware of any.

18 Q. Okay. The -- the revision in October of 2012
19 which is about the same time that Ms. Trawick moved
20 into marketing shows that it was updated for PCI
21 compliance by Fred Friedel. Do you see that?

22 A. I see he was the author. Is that what you
23 mean?

24 Q. Correct.

25 A. Yes.

1 Q. Do you know what updates were made in 2012?

2 A. I don't know specifically.

3 Q. Do you know what changes were made on PCI
4 compliance?

5 A. No, but I do know that PCI compliance was an
6 industry-wide issue in retail and all of that. So I
7 would assume it was to comply with changes.

8 Q. As you look at this document, you can't tell
9 me what was changed though?

10 A. No, I cannot.

11 Q. Okay. The bottom of the handbook on some of
12 the pages -- let me make sure I'm not missing it. I
13 think my copy accidentally has a copy of the code of
14 conduct behind it. I just have more than I need.
15 Yours ends with page -- the distribution list at the
16 bottom.

17 Yes. Okay. I just have an improperly stapled
18 document.

19 All right. The bottom of the document on the
20 left corner shows a document number and then V3,
21 which usually means version three. Are you aware if
22 there were two other versions of this final policy in
23 2013?

24 A. I am not.

25 Q. Do you have or have you seen version one or

1 version two?

2 A. I don't know.

3 Q. Do you have a copy?

4 A. I do not.

5 Q. Okay. The -- there is a provision in here on
6 laptops. Let me see if I can find it. On page nine,
7 item 14.

8 A. Roman numeral 14?

9 Q. Yes, sir. Do you see that?

10 A. I do.

11 Q. It says the My Documents folder for desk top,
12 notebooks and certain hand-held computers is
13 automatically synchronized to a server by the IT
14 department. Do you see that?

15 A. I do.

16 Q. Okay. How were laptops -- notebooks or
17 laptops backed up or synchronized to the server?

18 A. You're asking me how they were backed up?

19 Q. Uh-huh. (indicating in the affirmative).

20 A. I don't know.

21 Q. Did you have a laptop?

22 A. I did.

23 Q. When you took it into the office, did you have
24 to plug it in and back it up?

25 A. I was asked occasionally by IT to let them

1 back it up.

2 Q. Okay.

3 A. But, yes.

4 Q. So it was not a normal policy for every time
5 the laptop came into the office to be backed up?

6 A. Every time, no.

7 Q. Okay. For example, there are certain systems
8 where any time you go into the office and you dock
9 it, it automatically synchronizes. Did you have that
10 function?

11 A. I don't know.

12 Q. When you went into the office, did you have to
13 dock your laptop?

14 A. I rarely brought my laptop into the office.

15 Q. Okay.

16 A. I used it for email.

17 Q. All right. And this document indicates --
18 meaning Plaintiff's Exhibit 39 indicates that email
19 is not backed up because it's not included in the My
20 Documents folder; is that fair?

21 A. I don't know if it's fair or not.

22 Q. On your system was email included in your My
23 Documents folder?

24 A. I don't know.

25 Q. Did you have a Microsoft office system for all

1 other documents as well as the Microsoft Outlook
2 email?

3 A. Yes.

4 Q. When you signed in to look at documents, did
5 you have to click on the word icon and then click on
6 My Documents to get to your documents?

7 A. Yes, I believe so.

8 Q. Could you get to email that way?

9 A. I don't know.

10 Q. Could you click on My Documents and get to
11 email or did you have to go to Outlook?

12 A. I went to Outlook.

13 Q. Okay. Did you have any way to backup email to
14 a network at Carmike?

15 A. I believe my desk top was backed up.

16 Q. Your desk top email?

17 A. Yeah.

18 Q. Okay. Did you have other folders on your desk
19 top, notebook, and any PDA or hand-held computer
20 which would be an Ipad that was not saved to a My
21 Documents folder?

22 A. I don't know. I don't think of it in terms of
23 My Documents.

24 Q. Did you save any Adobe documents on your
25 laptop or Ipad?

1 A. No, I didn't use Adobe except to read
2 documents.

3 Q. Did you have it on your laptop or Ipad?

4 A. The feature?

5 Q. Correct.

6 A. To read, yes.

7 Q. On your laptop?

8 A. Yes.

9 Q. Okay. But not your Ipad?

10 A. No, I don't think -- I don't think that Apple
11 Ipad and Adobe were --

12 Q. Certainly not back in 2015.

13 A. I don't think so.

14 Q. Okay. The -- under the laptop slash remote
15 users, it says: If the network is not available,
16 users must insure that their files are regularly
17 backed up using external media such as compact disks
18 and zip drives until the time that they can make a
19 connection to the Carmike network. Do you see that?

20 A. I do.

21 Q. Okay. Did you do that?

22 A. I didn't have anything to back up.

23 Q. You had emails on your lab top; did you not?

24 A. My emails on my laptop were synchronized with
25 my emails on my desk top.

1 Q. And you didn't create any documents on your
2 laptop?

3 A. I did not. I would read documents and then
4 I would delete them.

5 Q. And is it your testimony that if you opened an
6 email on your laptop and deleted it, that it would
7 still be on your hard drive of your desk top?

8 A. It would be in the deleted file on my desk top
9 until I cleaned my deleted file because they were
10 synchronized.

11 Q. I did not see a destruction policy in the IT
12 policy. Did Carmike have a policy that -- or a
13 retention policy for electronic data?

14 A. I don't see it in this document. But I am
15 reasonably sure we had a retention policy that was in
16 writing.

17 Q. What was it called?

18 A. I don't know.

19 Q. Who issued it?

20 A. I believe it would have been drafted or
21 controlled through the legal department.

22 Q. What was the policy?

23 A. I don't know.

24 Q. So when you deleted your emails, was that
25 consistent with the policy?

1 A. I don't know what the policy was.

2 Q. Okay. Is there -- you'll note that in the --
3 excuse me -- in Roman numeral six on page three, it
4 says that there's no expectation of privacy for
5 electronic communications and information. Do you
6 see that?

7 A. I see the title.

8 Q. Okay. Did -- and it goes on to say that
9 Carmike can inspect and monitor. Did Carmike ever
10 inspect or monitor anyone's laptop?

11 A. I don't know.

12 Q. Did Carmike inspect or monitor Crystal
13 Trawick's laptop?

14 A. I don't know.

15 Q. Or her email?

16 A. I don't know.

17 Q. Or her Ipad?

18 A. I don't know.

19 Q. Are you aware of Carmike inspecting or
20 monitoring anybody's devices?

21 A. I have -- I have no recollection of any
22 monitoring.

23 Q. Okay. Did -- it also says in the third bullet
24 point at the end: Only Carmike authorized encryption
25 may be utilized. What was Carmike authorized

1 encryption?

2 A. I don't know.

3 Q. Did you ever send any encrypted documents?

4 A. None that I recall.

5 Q. Let me show you what has been marked
6 previously Plaintiff's Exhibit 40 which is an email
7 from Fred Van Noy to several folks. You are not on
8 there, I don't think.

9 A. I don't see my name on here.

10 Q. Have you seen that email before?

11 A. Not that I recall, no.

12 Q. Okay. The document itself -- and I'm sorry,
13 we have to share.

14 A. That's all right.

15 Q. I might be able to find one.

16 (Brief pause)

17 (Upon resuming)

18 BY MS. PREBULA:

19 Q. The documents itself is dated November 12,
20 2015 and deals with credit card usage, air travel,
21 meals, and hotel. Do you see that?

22 A. Air travel, meals and -- under the title of
23 credit card usage. Yes, I see that.

24 Q. Prior to this email on November 12, 2015, was
25 there any written policy on those items?

1 A. I don't know that there was.

2 Q. Are you aware of any?

3 A. I am not.

4 Q. Did -- do you know why you didn't get that
5 document?

6 A. No, I don't.

7 Q. Did you have any discussions before this
8 document came out that it was going to be sent out?

9 A. Not specifically that this document was going
10 to be sent out, no.

11 Q. Was there any investigation done on any person
12 other than Crystal Trawick with regard to any of
13 these expenses shown in Plaintiff's 40?

14 A. I don't know.

15 Q. You didn't participate in any, correct?

16 A. No, I did not.

17 Q. Do you know after Crystal moved into the
18 marketing department in 2012, how many people
19 reported to her?

20 A. I don't.

21 Q. Do you know how many people reported to
22 Shannon Sailors after that time period?

23 A. I don't.

24 Q. Are you aware of -- you had said earlier that
25 Terrell Mayton was terminated primarily for one of

1 the reasons because of the performance and not
2 meeting marketing goals. Do you remember that?

3 A. I do.

4 Q. Have you reviewed any numbers as to what
5 Crystal Trawick did to increase market share and
6 increase dollars and receipts while she was doing
7 marketing functions after Mr. Mayton left?

8 A. I reviewed marketing department results. I
9 reviewed marketing department goals and objectives.
10 And those were periodic reviews that were done for
11 virtually all departments.

12 Q. Who prepared those for the marketing
13 department?

14 A. I don't know.

15 Q. After Mr. Mayton left and Crystal took that
16 over, was marketing -- after 2012 when Crystal was in
17 the marketing department and Mayton had left, did
18 Crystal prepare those reports for you?

19 MR. GERAKITIS: Object to the form.

20 DEPONENT PASSMAN: I do not know.

21 BY MS. PREBULA:

22 Q. Are you aware of any reports of marketing
23 results that Crystal Trawick prepared?

24 A. I assume Crystal participated in the marketing
25 and reports after Terrell left. But I didn't know to

1 what degree.

2 Q. Do you know that she became completely
3 responsible for budgeting for both marketing and
4 advertising?

5 MR. GERAKITIS: Object to the form.

6 DEPONENT PASSMAN: No.

7 BY MS. PREBULA:

8 Q. Is that something you would have assigned or
9 someone else?

10 A. It would have been someone else.

11 Q. Fred Van Noy?

12 A. Fred Van Noy.

13 Q. Were you made aware of any complaints with
14 regard to reports prepared by Shannon Sailors after
15 Mr. Mayton left?

16 A. I need to make sure I understood.

17 Q. Were you made aware of any complaints about
18 reports that Shannon Sailors made after Mr. Mayton
19 left?

20 A. No.

21 Q. Were you made aware of any customer relation
22 issues with regard to Shannon Sailors after
23 Mr. Mayton left?

24 A. No.

25 Q. Were you made aware of any studio relation

1 issues with Shannon Sailors after Mr. Mayton left?

2 A. Studio relations?

3 Q. Issues.

4 A. No.

5 Q. Does it -- we talked earlier and said that we
6 weren't sure when Mayton was terminated. If I tell
7 you that it was in June of 2013, does that refresh
8 your recollection?

9 MR. GERAKITIS: Object to the form.

10 DEPONENT PASSMAN: It does not refresh my
11 recollection.

12 BY MS. PREBULA:

13 Q. Do you know if that is right?

14 A. I don't know if it's right. I think it was in
15 2013. I just don't recall when.

16 Q. So we're still in that summer, early fall time
17 period?

18 A. I don't know. I'm sorry.

19 Q. Well, I think that's what you said earlier,
20 summer, early fall 2013. Is that right? Don't know?

21 A. I'm not sure that was Terrell Mayton we were
22 taking about in summer, early fall. I thought it was
23 Crystal's maternity.

24 Q. No, that was 2014.

25 A. Okay.

1 Q. Okay.

2 A. I would have no reason to dispute that.

3 Q. Now, with regard to Crystal, you -- she was
4 not made a director; correct?

5 A. I don't know.

6 Q. You don't know if Crystal was ever made a
7 director of marketing?

8 A. I do not know.

9 Q. Okay. You do know that Crystal was not made
10 the chief marketing officer, correct?

11 A. I do.

12 Q. Then the answer is no, she was not; correct?

13 A. I do know she was not made the chief marketing
14 officer.

15 Q. Okay. And instead you hired a male from
16 outside the company to take over that role, correct?

17 A. No, that's not correct. There was no taking
18 over of a role. That was a new role within the
19 company.

20 Q. So you hired a male from outside the company
21 as chief marketing officer?

22 A. We did.

23 Q. And when Sadie Marshall was being considered
24 for VP of human resources, she did not get that
25 promotion either; did she?

1 MR. GERAKITIS: Object to the form.

2 DEPONENT PASSMAN: It is true that Sadie did
3 not become VP of human resources. I don't know
4 that she applied for it and interviewed for it.

5 BY MS. PREBULA:

6 Q. And a male was brought in from outside the
7 company to be vice president of human resources,
8 correct?

9 A. That is correct. That also was a new title.

10 Q. The -- Terra Hardwick that we talked about
11 earlier was also passed over for promotion to vice
12 president in 2015; was she not?

13 MR. GERAKITIS: Object to form.

14 DEPONENT PASSMAN: No.

15 BY MS. PREBULA:

16 Q. Didn't you bring a male in from outside the
17 company and make him chief technical officer, Jeff
18 Butkovsky?

19 MR. GERAKITIS: Object to form.

20 DEPONENT PASSMAN: Jeff came as part of the
21 DigiPlex acquisition. He was chief technology
22 officer for that company.

23 BY MS. PREBULA:

24 Q. And you brought him in over Terra Hardwick,
25 correct?

1 MR. GERAKITIS: Object to form.

2 DEPONENT PASSMAN: Yes.

3 BY MS. PREBULA:

4 Q. And Terra Hardwick did not get that position
5 as chief technical officer, correct?

6 A. Chief technology officer. She did not get
7 that position; nor did she apply for it.

8 Q. Of the 14 female district managers in 2015,
9 there is only one female, correct? Debra Triplet.

10 A. I think you need to restate -- you said the 14
11 female directors --

12 Q. Of the 14 -- if I misstated, I'll try again.
13 Of the 14 district managers in 2015, there was only
14 one female, Debra Triplet; correct?

15 A. I think that's correct.

16 Q. The -- and Wanda Sinkel (phonetic) was head of
17 restaurant services, correct?

18 A. No.

19 Q. She was not head over restaurant operations?

20 A. She -- she was head over some of the
21 restaurant operations.

22 Q. And then the company promoted a male, Scott
23 Dunaway, who had been her peer, over her to head
24 restaurant operations; correct?

25 A. Yes.

1 Q. The -- in November -- from -- from -- excuse
2 me. I'll try again.

3 From October 2012 when Ms. Trawick moved into
4 the marketing department, the only female director in
5 the company was Terra Hardwick; correct?

6 A. I don't know.

7 Q. Has there ever been a female officer of the
8 company?

9 A. I don't know.

10 Q. Was there a female officer of the company in
11 2015?

12 A. No.

13 Q. 2014?

14 A. No.

15 Q. 2013?

16 A. No.

17 Q. 2012?

18 A. No.

19 Q. At any time while you were president from 2009
20 until the company was sold, was there a female
21 officer of the company?

22 A. No.

23 Q. The -- is there any other woman of which you
24 are aware who was not promoted but had a male brought
25 in over her, in terms of a higher position other than

1 the ones we just discussed?

2 MR. GERAKITIS: Object to the form.

3 DEPONENT PASSMAN: I don't recall any.

4 BY MS. PREBULA:

5 Q. Is there any woman who was employed at the
6 company who was ever given stock as compensation?

7 A. I don't know.

8 Q. Can you name one?

9 A. I don't know.

10 Q. Is there any woman at the company who was ever
11 given stock options?

12 A. I don't know.

13 Q. Are you aware of any?

14 A. I just don't know.

15 Q. Do you have the reports from the outside --
16 not you. Did Carmike retain the reports from the
17 outside consultant that compared salaries at the
18 management level to other companies?

19 A. Are you referring to the reports that I had
20 mentioned earlier?

21 Q. Yes, sir.

22 A. That was management. That was the named
23 executive officers.

24 Q. Okay. Did Carmike retain those reports during
25 the time you were there?

1 A. I would assume they are part of the minute
2 books of the board.

3 Q. Did those -- was there ever a similar
4 consultant report with regard to the director
5 positions?

6 A. Not that I'm aware of.

7 Q. For example, director of HR, director of IT,
8 director of restaurants?

9 A. Not that I'm aware of.

10 Q. Okay. Were the women in the department, the
11 various departments, the ones we've discussed today,
12 were they paid the same as their male counterparts?

13 A. If they had the same duties, and the same
14 tenure, and the same performance, then I would assume
15 they were paid the same thing.

16 Q. Do you have any documents that show that?

17 A. No, nor do I have any complaints that show it
18 wasn't.

19 Q. Do you -- I mean, obviously, at some point HR
20 had the reports of who made what money, right?

21 A. Oh, yes.

22 Q. Were those documents turned over to AMC?

23 A. I don't know.

24 Q. Were all Carmike documents turned over to AMC?

25 A. I don't know. I would assume so.

1 Q. Did you destroy anything?

2 A. I didn't, no.

3 Q. Did you tell anybody to destroy anything?

4 A. I did not.

5 Q. To your knowledge, did anybody destroy
6 anything?

7 A. To my knowledge, no one destroyed anything.

8 Q. So when y'all left, the management team at
9 Carmike, you left the data in place?

10 A. I left my data in place. I can't speak for
11 everyone.

12 Q. The -- is it your understanding that the data
13 that was left in place would include salary and
14 compensation history back to at least 2009?

15 A. I do not know.

16 Q. But you didn't instruct anybody to destroy it?

17 A. No, I did not.

18 Q. And, similarly, you didn't instruct anybody to
19 preserve it either?

20 A. I did not.

21 Q. Let me show you Plaintiff's 49. This was
22 previously marked --

23 MR. GERAKITIS: You're calling this
24 Plaintiff's 49?

25 MS. PREBULA: I am.

1 MR. GERAKITIS: Have you produced the actual
2 Excel spread sheet for this? I'm going to ask
3 you.

4 MS. PREBULA: I produced it at the last
5 deposition, if not before.

6 MR. GERAKITIS: Have you produced the actual
7 Excel spread sheet? Not a copy.

8 MS. PREBULA: I don't have an electronic
9 version. I think we went through that in the last
10 deposition.

11 MR. GERAKITIS: No, no. I'm just asking you:
12 Have you produced a copy of an Excel spread sheet
13 of Plaintiff's Exhibit 49? Yes or no.

14 MS. PREBULA: I do not think we have an
15 electronic copy and so --

16 MR. GERAKITIS: So you're answering a
17 different question. Have you produced --

18 MS. PREBULA: I'm not -- it's on the record.
19 I have answered the question.

20 MR. GERAKITIS: No --

21 MS. PREBULA: I'm moving on. I have answered
22 the question.

23 MR. GERAKITIS: I'm going -- I'm going to
24 object to Plaintiff's Exhibit 49, which is
25 obviously not an original spread sheet. There is

1 no way to tell where it came from. It has folded
2 pages. It has lines that don't match up. It has
3 information that I can tell you is plainly
4 incomplete if you run the numbers either
5 vertically or horizontally.

6 So I'm telling you, you haven't produced it
7 and I find it -- well, I find it to be highly,
8 highly inappropriate to go over this with a
9 witness who, unless he created it -- and if you
10 want to ask him if he created it, we may resolve
11 everything.

12 So maybe you need to ask him whether he
13 created it, but I know you haven't produced it.

14 MS. PREBULA: Are you finished?

15 MR. GERAKITIS: You haven't produced it,
16 right?

17 MS. PREBULA: Are you finished?

18 MR. GERAKITIS: It's on the record you haven't
19 produced it.

20 MS. PREBULA: You are wrong. We -- and if you
21 allowed me to ask my question, you would have
22 heard it. We produced this at --

23 MR. GERAKITIS: You --

24 MS. PREBULA: Let me finish, Richard. We
25 produced this at Shannon Sailors' deposition.

1 MR. GERAKITIS: As a copy.

2 MS. PREBULA: And as -- as a copy. And I have
3 said in both --

4 MR. GERAKITIS: And there --

5 MS. PREBULA: Will you let me finish.

6 I have said in depositions I do not believe we
7 have an electronic copy of it. So let me finish
8 my question, what I was saying to you and perhaps
9 this will clear up his problem.

10 MR. GERAKITIS: During the break, I will bring
11 up Mr. Shannon Sailors' deposition so you can hear
12 exactly what you said.

13 BY MS. PREBULA:

14 Q. Plaintiff's 49 is a copy of Plaintiff's 42,
15 which was produced at Mr. Sailors' deposition. And
16 what I was going to show you is that at the last
17 deposition, Mr. Gerakitis had issues with it because
18 part of it were on different pages because we
19 produced a hard copy.

20 So what we have done so that it's easier is we
21 have, in fact, cut and pasted Plaintiff's 42 onto
22 Plaintiff's 49.

23 So having said that, both are available for
24 your review.

25 MR. GERAKITIS: Object to the form. This is

1 not an original Excel spread sheet. Either 42 or
2 49.

3 MS. PREBULA: It's paper. It's clearly paper.

4 MR. GERAKITIS: It's not even a spread sheet.

5 BY MS. PREBULA:

6 Q. Mr. Passman, in November of 2015 -- and I know
7 that some of these are post-Ms. Trawick leaving. So
8 those are the questions I'm going to ask you.

9 In November of 2015, was Fred Van Noy COO?

10 A. Yes, he was.

11 Q. And Richard Hare was CFO?

12 A. Yes, he was.

13 Q. And Dan Ellis was general counsel, spelled
14 wrong?

15 A. Yes, he was.

16 Q. And Bud Mayo was the president of the
17 alternative programming that you discussed?

18 A. Yes, he was.

19 Q. Did -- and you were president and CEO?

20 A. Yes, I was.

21 Q. Okay. The numbers next to Mr. Van Noy show
22 male 22, female two. Is that the number of people
23 that reported to Mr. Van Noy in November of 2015?

24 A. I do not know.

25 Q. So if I ask you with regard to each of these

1 other report numbers, would your answer be the same
2 that you do not know how many people reported to each
3 individual?

4 A. It would.

5 Q. All right. In November of 2015, were Rob
6 Lehman, John Lundin and Rob Collins the VPs and CMOs
7 listed?

8 MR. GERAKITIS: In when?

9 DEPONENT PASSMAN: Can we go back over that
10 again?

11 BY MS. PREBULA:

12 Q. I said November 2015.

13 A. Can we go over the names slowly so I can --

14 Q. Sure. I'll do you one of each.

15 A. Thank you.

16 Q. Okay.

17 A. Thank you.

18 Q. In November 2015, Rob Lehman was a vice
19 president, right?

20 A. I don't know his title.

21 Q. Okay. But he was there in November of 2015?

22 A. He was.

23 Q. In November 2015, was John Lundin a vice
24 president?

25 A. I don't know if he was a vice president, but

1 he was there.

2 Q. Do you know what Rob Lehman, what
3 responsibilities he had or what department he was
4 over?

5 A. Rob Lehman?

6 Q. Correct.

7 A. Yes.

8 Q. What?

9 A. We called it concessions or food and beverage
10 eventually.

11 Q. And how about John Lundin?

12 A. John Lundin was film buyer. He was the head
13 film buyer. He oversaw the film department.

14 Q. And in November 2015, Rob Collins was not
15 there, was he?

16 A. No, he wasn't.

17 Q. He was hired in later as chief marketing
18 officer?

19 A. That's correct.

20 Q. In November of 2015, was Jeff Cole there?

21 A. Yes, he was.

22 Q. And he's listed as a vice president.

23 A. I don't know his title. I'm sorry.

24 Q. What was he over?

25 A. He was the controller of the company.

1 Q. And Jeff Butkovsky is listed as chief
2 technical officer?

3 A. That's correct.

4 Q. Now, I've said chief technical officer and
5 occasionally you've said chief technology officer.
6 Which is correct?

7 A. Technology.

8 Q. Okay. And then Patrick Railey is listed as a
9 vice president. He was not there in November 2015,
10 was he?

11 A. No, he wasn't.

12 Q. Okay. When was he hired in?

13 A. I believe it was in January of '16.

14 Q. And he was hired in as vice president of human
15 resources over Sadie Marshall?

16 MR. GERAKITIS: Object to the form.

17 DEPONENT PASSMAN: Yes, I believe that was his
18 title.

19 BY MS. PREBULA:

20 Q. And Sadie then reported to him, correct?

21 A. That is correct.

22 Q. Prior to his hiring, did Sadie Marshall report
23 to anybody other than you?

24 MR. GERAKITIS: Object to form.

25 DEPONENT PASSMAN: Yes.

1 BY MS. PREBULA:

2 Q. Who?

3 A. Dan Ellis.

4 Q. Okay. Dan Ellis was not a vice president,
5 correct?

6 A. I don't think so. I think he was a senior
7 vice president.

8 Q. Okay. In November 2015, was Chuck Goldwater a
9 vice president?

10 A. I'm not sure Chuck was with us in November of
11 2015. I don't remember when he left.

12 Q. Okay. So he -- he was not a later hire. He
13 had been there and left?

14 A. He was part of the DigiPlex acquisition.

15 Q. When was that?

16 A. I believe we completed it, I want to say mid
17 to late -- give me a moment. I've got a calculator.

18 Q. Sure.

19 A. I think it was in the fall of 2014.

20 Q. That he left?

21 A. No, that we did the acquisition.

22 Q. Okay. So he came in in fall of 2014 and then
23 left before November of 2015?

24 A. I believe so.

25 Q. And what was he in charge of?

1 A. He was -- he was in charge of the special
2 projects for Fred Van Noy.

3 Q. So he reported to Fred?

4 A. He did.

5 Q. Do you know what kind of special projects?

6 A. Yes.

7 Q. What?

8 A. He did research and analysis on theater
9 conversions from traditional small chairs to luxury
10 seating. He did analysis and research on whether to
11 convert to dine-in, among other things.

12 Q. How about John Halecky, was he a vice
13 president in November 2015?

14 A. I don't know his title, but he was there in
15 November of 2015.

16 Q. What was his department?

17 A. He was a marketing communications guy for
18 alternative programming primarily, but it included
19 some Carmike marketing as well.

20 Q. I think I know what you mean. But what do you
21 mean when you say alternative programming?

22 A. Alternative programming was -- it included
23 things that were nontraditional first run movie
24 business. It might be plays, opera, sporting,
25 gaming. Any number of nontraditional venues where

1 patrons would come to the movie theater and sit in
2 movie theater seats but do something other than watch
3 a first run movie.

4 Q. Okay. What about Doreen Sayegh? Is that how
5 you say it, Sayegh?

6 A. If you say so.

7 Q. Okay. Was she a vice president in November of
8 2015?

9 A. I don't know her title, but she worked for Bud
10 Mayo. I believe these were all vice presidents, but
11 I'm not certain.

12 Q. Do you think -- and Bud Mayo was the president
13 of alternative programming?

14 A. That is correct.

15 Q. And what was her area, what was her
16 department?

17 A. She was also in marketing.

18 Q. For alternative?

19 A. Well, we ran a fairly flat organization,
20 fairly lean on personnel. The people in marketing,
21 whether it be alternative programming or a new
22 theater opening or just traditional operations, it
23 was whatever hands on desk were needed would
24 contribute. But she was primarily AP. And Joe
25 Solomon, same thing.

1 Q. And you don't know -- what was her title? You
2 don't know? Same thing.

3 A. I think these are accurate at vice president,
4 but I don't know.

5 Q. And they're VP of the alternative programming
6 division, not the whole company.

7 A. That's correct.

8 Q. Okay. And Gary Green?

9 A. Gary was a -- a technical resource. He was
10 there. He actually was an old -- whatever you call
11 it -- old line Carmike person who transferred into
12 alternative programming. He headed up alternative
13 programming for Carmike at the time that we acquired
14 DigiPlex. So he just moved into their group. He was
15 in charge of it.

16 Q. And he was still there in November of 2015?

17 A. Yes.

18 Q. So the -- if we drew a line like to the left
19 of Bud Mayo, the Bud Mayo column, that's a subset of
20 everything to the right is alternative programming
21 and is a subset of the main Carmike company? In
22 other words, those five individuals: Bud Mayo -- I
23 guess it's six -- Goldwater, Halecky, Sayegh, Solomon
24 and Green were not officers of Carmike but officers
25 of alternative programming.

1 A. They were not officers of Carmike, but Bud
2 Mayo was.

3 Q. Okay. I'm with you. All right. And then if
4 we go back to the left column under COO, Fred Van
5 Noy, there are three directors listed: Shannon,
6 David Pflegal, Brad Dobson. Were each of those
7 directors in November of 2015?

8 A. I don't know what their titles were, but they
9 were each at Carmike.

10 Q. And Sailors --

11 A. I say they each were. Brian Dobson, I think
12 joined us in 2015. I just don't know what month.
13 Whether he was there in November or not, I can't -- I
14 can't say.

15 Q. And Shannon Sailors was in advertising.

16 A. That's correct.

17 Q. What was David Pflegal?

18 A. I believe the department was labeled
19 technical. They did everything from put up the movie
20 screens, to the curtains in the theaters, to
21 replacing seats, speaker systems, projectors.
22 Anything technical within a theater.

23 Q. And were both -- but Sailors was there in
24 November 2015, right?

25 A. Yes.

1 Q. And was Pfl legal still there in November 2015?

2 A. Yes.

3 Q. So if you think Dobson came in in 2015, do you
4 think he was there by the end of the year?

5 A. I think so.

6 Q. But we don't know for sure.

7 A. I don't know for sure.

8 Q. All right. And let's just go down the rest of
9 that column. Under -- still under COO is two
10 division managers are listed: John Greer and Jim
11 Lucas. Were they the only two division managers?

12 A. At that point, yes.

13 Q. Okay. And they were both there in November of
14 2015?

15 A. Yes.

16 Q. Okay. What is the difference in -- or what
17 was the difference in Carmike in November of 2015
18 between a division manager and a district manager?

19 A. The two division managers oversaw the roll-
20 out, if you will, of half of all the theaters each.

21 Q. Okay.

22 A. So the district managers would report to the
23 division managers. And I don't know that it was
24 split seven and seven.

25 Q. Okay. And Crystal Trawick is listed under

1 there and she did report to Fred Van Noy in November
2 of 2015, right?

3 A. That is correct.

4 Q. And I think we've already said she was the
5 manager of marketing projects manager.

6 MR. GERAKITIS: Is that a question?

7 MS. PREBULA: No, I'm just -- I think we've
8 already said that.

9 BY MS. PREBULA:

10 Q. Right? At that point, she was marketing
11 projects manager?

12 A. You'll have to pull the title up. I don't
13 remember what the title was.

14 Q. It's Plaintiff's 44 is what I was looking at.

15 A. This says marketing projects manager.

16 Q. Okay.

17 A. I assume this is correct. I just don't know.

18 Q. Also under the COO Fred Van Noy's column is
19 John Kellin --

20 A. Yes.

21 Q. -- as a supervisor. What did he do?

22 A. John -- his primary responsibility was
23 supervising the Carmike seat shop. We would take old
24 seats, take them to that shop. They'd sandblast
25 them, get the rust off of them. Build new seat

1 cushions and then send them out to theaters as
2 needed. There were other things he was responsible
3 for as well, but the lion share of it was seats.

4 Q. So what was he supervisor of?

5 A. All the people who made the seats plus all the
6 people who repaired the popcorn machines and those
7 kinds of things.

8 Q. Kind of mechanical? Was he mechanical --

9 A. I wouldn't call it mechanical.

10 Q. Okay.

11 A. I would -- you know, the seat construction was
12 more reconditioning things. There weren't automated
13 parts or that kind of thing. The popcorn machines --
14 if the popper was broken, he would order a new popper
15 and install it in the machine, make sure it worked
16 and then send it out. But he had a pretty good size
17 crew. Several thousand square feet of space in which
18 they did all of that.

19 Q. And he reported to Fred Van Noy?

20 A. I don't think so.

21 Q. Okay. Who do you think he reported to?

22 A. I think he reported to David Pflegal.

23 Q. Who then reported to Fred Van Noy?

24 A. That's correct.

25 Q. And was Mr. Kellin there in November of 2015?

1 A. Yes, he was.

2 Q. And where we show the district managers under
3 Fred Van Noy, did the district managers -- I think I
4 understood you to say they would report to division
5 managers and then the division managers report to
6 Fred Van Noy?

7 A. That's correct.

8 Q. Okay. All right. And then under the CFO,
9 Richard Hare --

10 A. Yes.

11 Q. -- we have one, two, three, four, five, six,
12 seven, eight directors. Do you see that?

13 A. I do see it.

14 Q. I'm not going to go through all those names
15 unless we need to. Were all of those directors at --

16 A. I don't know if they were directors or not.

17 Q. Okay.

18 A. But they were not all direct reports to
19 Richard.

20 Q. Oh, okay. So then let's do that. Are you
21 aware of any corporate organization chart that would
22 show how the lines of reporting were?

23 A. Yes.

24 Q. What did it -- what was it called?

25 A. I think it was called an organizational chart.

1 Q. And who had it?

2 A. I don't know who maintained it. I would guess
3 the corporate secretary would have it.

4 Q. Did your corporate secretary, who is also your
5 general counsel, act as a traditional secretary
6 keeper of records?

7 A. His department did.

8 Q. Okay. And who was -- well, who was his main
9 report, who would be in charge of records retention?

10 A. He had a -- I'm going to call it a paralegal
11 or legal assistant. I'm not sure what the technical
12 terms are.

13 Q. What was his or her name?

14 A. Her name was Rebecca. And I'd have to look at
15 the phone chart to give you her last name.

16 Q. Okay.

17 A. But in November of 2015, I think she was in
18 place.

19 Q. It's the last page.

20 A. I think she was in place. This is January of
21 '15.

22 Q. Yeah.

23 A. Let's see if she was there then. Yeah,
24 Rebecca Jones.

25 Q. Do you know where she is now?

1 A. I do not.

2 Q. Okay. So back looking under Richard Hare,
3 what was -- was Fred Friedel there in November of
4 2015?

5 A. Yes, he was.

6 Q. And what was his role?

7 A. He was our compliance officer.

8 Q. Was he an officer of the company or was that
9 just his title?

10 A. I don't believe he was an officer of the
11 company. I think that was just his title, but I'm
12 not a hundred percent certain.

13 Q. Do you know if he was director level?

14 A. I don't. I will tell you I don't know any of
15 these, whether they were directors or what their
16 titles were.

17 Q. Okay. So what was -- what was Greg Wiggins'
18 role?

19 A. Greg Wiggins was responsible for external
20 reporting.

21 Q. And what does that mean?

22 A. Filings with the Securities and Exchange
23 Commission, stockholder reports.

24 Q. Anything --

25 A. Yeah, yeah. There was -- I'm just going to

1 get to that.

2 Q. Anything legal?

3 A. Legal?

4 Q. Yeah, I mean it was like the legal reporting
5 requirements, SEC, stockholder?

6 A. He was responsible for that, but he was also
7 responsible for producing the financial statements
8 that we -- that we relied on to manage the company.
9 But he also was the lead on -- he and Jeff Cole
10 shared budgeting process for the company.

11 Q. Who did he report to?

12 A. He reported to Richard Hare.

13 Q. Okay. And was he there in November of 2015?

14 A. Yes.

15 Q. Terra Hardwick was in IT?

16 A. That's correct.

17 Q. You don't know her title?

18 A. That's right.

19 Q. Was she there in November of 2015?

20 A. Yes, she was.

21 Q. Who did she report to?

22 A. Richard.

23 Q. Hare?

24 A. Hare.

25 Q. Arlie Verville, is that man or a woman?

1 A. It's a female.

2 Q. And was she there in November of 2015?

3 A. Yes, she was.

4 Q. What was her function?

5 A. Her primary function -- and I think she had
6 several that handled reporting to Fred on theater
7 operations. But she was in the -- I'm going to call
8 it the data management system or information
9 management systems area.

10 Q. When you say she reported to Fred, which Fred?

11 A. I'm sorry. I didn't mean to say she reported
12 to Fred. I said she provided reports to Fred that he
13 used in turn to manage the theater operations. She
14 reported to Richard.

15 Q. So she provided reports to Fred Friedel?

16 A. No, Fred Van Noy.

17 Q. All right. And she reported to Richard Hare?

18 A. Yes.

19 Q. All right. Thomas Wilkerson?

20 A. I don't think he was there in November of
21 2015. But if he was, he reported to Dan Ellis. And
22 he was in charge of real estate development.

23 Q. Does that include theater locations?

24 A. It does.

25 Q. And I don't --

1 A. Primarily new theater locations.

2 Q. And I don't recall if I asked you was
3 Ms. Verville there in November of 2015?

4 A. Yes, she was.

5 Q. Thomas Zehr? What was his role?

6 A. Jim Zehr?

7 Q. Jim Zehr. You're correct.

8 A. Jim Zehr was also in real estate development.
9 And I assume you want to know what that means?

10 Q. Unless it's the same as Wilkinson.

11 A. It's not the same.

12 Q. All right.

13 A. His primary responsibility -- again, if you go
14 back to my comment about being fairly lean, they
15 traded off and helped each other a lot. But his
16 primary responsibility was legacy properties. So it
17 might be a lease renewal or refurbishment of an old
18 theater.

19 Q. Okay. Was he there in November of 2015?

20 A. Yes, he was.

21 Q. And Gus McMurray?

22 A. Gus McMurray was our tax director. I don't
23 know if director was his title, but...

24 Q. Who did he report to?

25 A. He reported to Richard Hare.

1 Q. Was he there in November of 2015?

2 A. He was.

3 Q. And the last person in that category is Patti
4 Gaddis. Was she there in November of 2015?

5 A. She was.

6 Q. What was her role?

7 A. I'm going to call it risk management.
8 Insurance with property and liability insurance kind
9 of issues.

10 Q. Did she handle officers and directors as well?

11 A. Handle it?

12 Q. You said she was responsible for property and
13 liability insurance. Did that include responsible
14 for --

15 A. Paying the bills, yes.

16 Q. Okay.

17 A. But she did not assess officers and director's
18 liability. Dan Ellis did that. And I don't recall
19 if she reported to Richard Hare or Dan Ellis.

20 Q. Are all the people in this list under
21 directors, even though you don't know if they're a
22 director under Richard Hare, were they all at the
23 same level of the company or different levels?

24 MR. GERAKITIS: Object to the form.

25 DEPONENT PASSMAN: I can't answer that. We

1 did not think of it that way.

2 BY MS. PREBULA:

3 Q. Well, on the organizational chart that you had
4 the privilege of seeing --

5 A. Uh-huh. (indicating in the affirmative).

6 Q. -- were they on the same level?

7 A. I don't recall.

8 Q. And then under here, we have listed Dawn
9 Smith. And I think we discovered last time that she
10 had a different name as well.

11 A. Maybe Dawn Saint?

12 Q. Yeah. Because she got married or divorced or
13 something.

14 MR. GERAKITIS: Object to the form. You may
15 have said that in the deposition. That's not an
16 accurate statement if you're asking him to adopt
17 it.

18 MS. PREBULA: I'm not asking him.

19 MR. GERAKITIS: That she has a different name
20 because of a divorce or something.

21 BY MS. PREBULA:

22 Q. Are Dawn Smith and Dawn Saint the same person?

23 A. I don't know.

24 Q. Did her name change while she was at Carmike?

25 A. I don't know.

1 Q. Do you know who Dawn Smith is?

2 A. I know who Dawn is, the payroll manager.

3 Q. Okay.

4 A. And I thought her name was Dawn Saint.

5 Q. And I think the payroll manager is listed on
6 Plaintiff's Exhibit 43. It's listed as Dawn Smith as
7 well on Plaintiff's 43. Is that the same Dawn you're
8 referring to? She's listed under payroll as manager.

9 A. Yes, that's the same person I'm referring to.

10 Q. Okay. Did her name change to Saint at some
11 point?

12 A. I do not know.

13 Q. Did you know her as Dawn Saint?

14 A. I did. I always thought of her as Dawn Saint,
15 but I don't know if that was accurate.

16 Q. A/k/a Dawn Saint. What was her name in
17 November of 2015?

18 A. Dawn.

19 Q. You don't know the last name?

20 A. No, no. And her extension was 2826.

21 Q. So there is only one Dawn and she was the
22 payroll manager as far as you know?

23 A. There's only one Dawn in payroll that I'm
24 aware of.

25 Q. All right. And did she report to Richard

1 Hare?

2 A. Yes.

3 Q. Okay.

4 A. I take that back. I'm not sure that's
5 accurate. I think she may have reported to the
6 controller. I'm not sure.

7 Q. In November of 2015, who would that be?

8 A. That would be Jeff Cole.

9 Q. And then Jeff Cole would report to Richard
10 Hare?

11 A. That's correct.

12 Q. Okay. Did you ever see any documents with the
13 name Dawn Saint on it?

14 A. I honestly don't recall.

15 Q. Okay. Do you know if she was a manager --
16 manager level?

17 A. I'm sorry. I don't know. She was definitely
18 in management because she supervised several people
19 in the payroll department.

20 Q. How many people did she supervise?

21 A. Several. I don't know.

22 Q. What does several mean to you? That means
23 different things to different people.

24 A. Sure. More than three or four.

25 Q. Okay. All right. And then under the same

1 column under CFO, we have three supervisors listed.
2 Was supervisor a title of the company or is this just
3 a descriptor?

4 A. Respectfully, I paid very little attention to
5 titles within the company. So I can't answer that
6 question.

7 Q. All right.

8 A. I just don't know.

9 Q. Do you know who Melissa Costello was?

10 A. I don't recall.

11 Q. Okay. You just don't recall her at all?

12 A. I recall the name. I just don't recall what
13 she did for Carmike. And the same would be true of
14 Amanda Hodge. Jamie Brooks, I don't recall that name
15 either.

16 Q. Are all three of them women?

17 A. Yes. I'm assuming Jamie is.

18 Q. You don't know?

19 A. I don't recall Jamie Brooks. Amanda and
20 Melissa, I have seen. Yes, they are women.

21 Q. And you don't know what their functions was?

22 A. I don't recall.

23 Q. Okay. And then under general counsel, we have
24 already talked about Sadie Marshall. Who is Hugh
25 Shedrick?

1 A. Hugh was responsible for our building
2 maintenance, mail room, and going to and from the
3 post office in addition to any other duties that
4 people would assign him.

5 Q. And did he report to Dan Ellis?

6 A. Yes.

7 Q. Do you know why he reported to legal counsel?

8 A. We were a fairly thin or lean organization and
9 we divided things up that were either based on time
10 consuming or based on a particular skill set. And
11 Dan ended up with Hugh.

12 Q. Okay. And you haven't seen Plaintiff's 42 or
13 49 before today, correct?

14 A. No. In fact, I'm trying to figure out where
15 this even came from because I don't know that there
16 are names that should be on here.

17 Q. And that was actually going to be my next
18 question which is in November of 2015, are you aware
19 of anyone who is missing on this organization chart
20 from the supervisor level up?

21 A. That's going to take a while for me be able to
22 answer.

23 MR. GERAKITIS: Mary, are you representing
24 that there are 73 women listed on Plaintiff's
25 Exhibit 49?

1 MS. PREBULA: I'm not representing anything.
2 I'm asking questions.

3 MR. GERAKITIS: Well, the witness asked if you
4 wanted him to go through and look at it. I am
5 happy to point out that at page 315, lines seven
6 through eight and 12 through 13 of Mr. Sailors'
7 deposition back on September 11th, you represented
8 expressly: This is an Excel spread sheet that we
9 produced, referring to Plaintiff's Exhibit 42,
10 which is what you have tried to use as Plaintiff's
11 Exhibit 49 today.

12 I said: You have not produced Plaintiff's
13 Exhibit 42. You said: I'm saying we produced it.
14 You're saying we haven't. Move on.

15 You have not produced an Excel spread sheet of
16 Shannon Sailors' Exhibit 42 or of Plaintiff's
17 Exhibit 49 that you have been going over with this
18 witness.

19 And my question to you is if you want him to
20 review it for accuracy, we'd like to know does it,
21 Plaintiff's Exhibit 49, have 73 women listed on
22 it?

23 BY MS. PREBULA:

24 Q. Mr. Passman, as you sit here today, do you
25 know if there's anyone missing as of November 2015

1 from this list? I realize you may not. It may not
2 be a complete response because you're doing it in a
3 quick situation.

4 MR. GERAKITIS: He can take all the time he
5 needs to look at it to find all 73.

6 DEPONENT PASSMAN: Part of the problem I've
7 got with it by saying I don't know how this thing
8 was created is that we had senior people in the
9 organization -- not officers of the company, but
10 senior people in the organization that are not on
11 here that are six figure income people.

12 BY MS. PREBULA:

13 Q. Okay. Who do you know that is not on there?

14 A. Well, in John Lundin's group, there is Bob
15 Scarborough. He was a film buyer. And Jawan Taylor.
16 Bob's a male. Jawan is a female.

17 Q. Can you spell that one because that's not on
18 anywhere. J-e-w-a-n?

19 A. J-a-w-a-n.

20 MR. GERAKITIS: When you say it's not on
21 anywhere, you mean on Plaintiff's Exhibit 49?

22 MS. PREBULA: I'm just asking about the
23 spelling. I don't see that spelling anywhere.
24 It's J-a-w-a-n?

25 DEPONENT PASSMAN: I believe it is J-a-w-a-n.

1 MR. GERAKITIS: J-u-w-a-n.

2 MS. PREBULA: Can I ask that the witness
3 testify instead of you, Mr. Gerakitis?

4 MR. GERAKITIS: I'm just trying to help with
5 the spelling for you.

6 DEPONENT PASSMAN: J-a-w-a-n on here.

7 BY MS. PREBULA:

8 Q. And how is the last name spelled?

9 A. Taylor. T-a-y-l-o-r.

10 Q. Okay. And that's a female?

11 A. Yes.

12 Q. Bob Scarborough is missing?

13 A. Right. I don't know, again, organizationally
14 these people under them.

15 Q. Okay.

16 A. Whether they were supervisors or staff in the
17 film department.

18 Q. So you're looking back at Plaintiff's Exhibit
19 43.

20 A. I am.

21 Q. And you can't -- can you tell me if, as you
22 look at 43, if any of those people would have been --
23 clearly wouldn't have been on the executive
24 committee, right? We've got the whole executive
25 committee here.

1 A. Well, there's another issue.

2 Q. Okay.

3 A. There is no executive committee within
4 management.

5 Q. Okay.

6 A. We called it the executive team. The
7 executive committee was a board role.

8 Q. As in board of directors?

9 A. As in board of directors.

10 Q. Okay. When I said the executive committee, I
11 really was not looking at that number because that
12 seems to be undefined to me. I was looking at -- if
13 we look at what you had said earlier, that your
14 executive team was the COO, CFO, general counsel.
15 And then Bud Mayo was added, the president of AP.
16 And then eventually you added the CMO, Rob Collins.

17 A. That's correct.

18 Q. That's what you defined as the executive
19 group.

20 A. The executive team.

21 Q. All right. You called it the executive team.
22 Okay.

23 A. That's right.

24 Q. All right. And is that the complete list of
25 the executive team?

1 A. Yes, it is.

2 Q. Okay. I mean, it's pretty clear if you look
3 at this piece of paper. There's not 73 names listed
4 or 56 names listed. That's pretty clear. I'm not
5 representing anything to you about numbers. I'm
6 simply using this to go over an organizational chart
7 because we have not been provided one.

8 So is there anyone else that was on the
9 executive team that we have not talked about?

10 A. No.

11 Q. Is there any other vice president -- I realize
12 you said some of these were not vice presidents --
13 any other vice president in November of 2015 that's
14 not listed?

15 A. I don't know.

16 Q. Okay. If you look --

17 A. You've asked me about omissions on whatever
18 this document is.

19 Q. Right. Plaintiff's 49.

20 A. While I'm still looking at it, I believe that
21 the legal -- paralegal was a -- would be at a pay
22 level that would be commensurate with some of these
23 managers and certainly above supervisor level.

24 Q. Rebecca Jones?

25 A. Yes. And Linda Day before her.

1 Q. And she was the legal assistant before Rebecca
2 Jones?

3 A. Yes. Again, I'm not sure whether her title
4 was legal assistant.

5 Q. Or paralegal.

6 A. Yes, whatever it was. Yes.

7 Q. Was she there, Linda Day, between 2012 and
8 2015?

9 A. Yes, for a substantial portion of that time.
10 Yes.

11 Q. And you would consider both of those at
12 manager level?

13 A. I would consider both of those to be above
14 several of these people on this list.

15 Q. Okay. Did you happen to keep a copy of the
16 organizational chart?

17 A. No, I kept no Carmike records whatsoever.

18 Q. So you're looking to see if you see anybody
19 else missing?

20 A. Yes.

21 Q. Okay.

22 A. In the controller's office, I believe Leah
23 Reynolds.

24 Q. Was what?

25 A. She was either at or very, very close to six

1 figure income level. She was above, again, several
2 other people on this list. Melissa Costello, Jamie
3 Brooks, Amanda Hodge, John Kellin, Hugh Shedrick.

4 Q. So you would put her at manager level; is that
5 what you're saying?

6 A. Yes, yes. Kathy Schoonover. And I don't
7 recall if Kathy was with us in November of 2015. But
8 her position as accounting manager would clearly
9 belong somewhere on this list.

10 Q. At the manager level?

11 A. Again, I don't know what her title was. But
12 she was accounting manager so I would assume it would
13 be a manager or director. I just don't know.

14 Q. And she would have reported to CFO?

15 A. No, she would have reported to the controller.

16 Q. Who was?

17 A. Leah Reynolds would have -- I believe at that
18 time, reported also to the controller.

19 Q. And who was the controller in November of
20 2015?

21 A. Jeff Cole.

22 Q. Just making sure we're on the same page.

23 A. Sure.

24 Q. Megan Copner. This, as of January 2015, shows
25 her working for Fred Van Noy in the COO's office.

1 A. I'm not sure at that point in time whether
2 that's where she was or whether she was in the
3 accounting department.

4 Q. Was she there in November of 2015?

5 A. I believe she was.

6 Q. When you --

7 A. Megan -- Megan left us and then came back to
8 us. And I don't remember the separation dates.

9 Q. When you say she was in Van Noy's office, what
10 did she do when she was in Van Noy's office?

11 A. She was his -- I'm going to use a term that
12 Carmike is not even familiar with. But to me, she
13 was a business analyst.

14 Q. Do you know her title was or her job function?

15 A. It was to do anything that Fred needed in
16 terms of analysis. Fred had upwards of almost 300
17 movie theaters that he tried to keep a pulse on. And
18 he would have her do projects, analyzing, comparing,
19 new contracts with vendors, any number of things.
20 But typical analyst type work.

21 We had fixed assets. I want to say manager.
22 Again, I'm not trying to use a title but she was
23 responsible for all fixed assets of the company and I
24 believe she would be above other folks on this list
25 as well.

1 Q. What other folks? Are you putting her as a
2 manager --

3 A. She would be above the supervisors.

4 Q. Above the supervisors.

5 A. She would either be a manager or a director
6 kind of person.

7 Q. What was her name?

8 A. Gabi.

9 Q. G-a-b-b-y?

10 A. No. G-a-b-i.

11 Q. Okay.

12 A. Murray. M-u-r-r-a-y.

13 Q. And was she there in November of 2015?

14 A. Yes. And she would have reported to Jeff
15 Cole, the controller.

16 Q. Would you agree that Crystal Trawick was, as a
17 manager, a marketing projects manager, that she's in
18 the right category on this chart?

19 MR. GERAKITIS: Object to the form.

20 BY MS. PREBULA:

21 Q. Would you move her up or down?

22 A. Well, I wouldn't agree that several of these
23 people are in right category on this chart.

24 Q. Okay. You've told me --

25 A. I would not at all say that a division manager

1 is the same as a district manager or a manager.

2 Q. They would be above --

3 A. Way above.

4 Q. We've already talked about that, that the
5 district managers were --

6 A. Reporting to --

7 Q. -- reporting to division managers.

8 A. Right. And the division managers didn't have
9 a corporate title.

10 Q. Okay.

11 A. If they did, it would be at the vice president
12 kind of level.

13 Q. And would you agree that Crystal Tra -- is it
14 your position that Crystal Trawick was at the manager
15 level as marketing projects manager?

16 A. I don't know. What I do know is what you've
17 presented to me as her title and what I understood
18 her job to be, which was managing projects.

19 Q. So would you consider her to be a manager
20 level employee?

21 A. Yes.

22 Q. Okay.

23 A. Yes.

24 Q. And she had people that reported to her?

25 A. Yes, I believe she did.

1 Q. Okay.

2 A. No, I know she did. Yes, I know she did.
3 Yes.

4 Q. Are you still looking to see if there are
5 others? I don't want to interrupt that if you are.

6 A. Yes, I am.

7 Q. I know it will be incomplete because you're
8 doing it under the gun.

9 A. Right. David Glass. He was like Bob
10 Scarborough and Jawan Taylor, but he was not as
11 tenured nor carried as many responsibilities for
12 numbers of theaters that he booked films for. But he
13 was a film booker.

14 Q. As opposed to --

15 A. That's my term. Not a title.

16 Q. As opposed to a film buyer?

17 A. He was a film buyer, yeah. Thank you for the
18 correction.

19 Q. All right. And was he there in November of
20 2015?

21 A. Yes.

22 Q. So you'd put him at the same level as
23 Scarborough and Taylor?

24 A. Yes. Linda Stroud -- and that's S-t-r-o-u-d
25 -- shows up on this telephone directory as a

1 supervisor for film rent. She -- I believe her job
2 in November of 2015 was to reconcile and pay studios
3 whatever film rent we owed them.

4 Q. And what level would you put her at?

5 A. I believe she would be a supervisor kind of
6 level.

7 Q. Okay.

8 A. Sam McQuagg. He was our chief pilot.

9 Q. As in airplane?

10 A. As in airplane.

11 Q. Okay.

12 A. And I don't know his title.

13 Q. And I did not ask you if Linda Stroud was
14 there in November of 2015?

15 A. I believe she was.

16 Q. And who did she report to?

17 A. She would have reported to someone in the film
18 department or John Lundin. I'm speculating it would
19 be John Lundin.

20 Q. Okay. And who did the pilot report to?

21 A. He reported to Fred Van Noy.

22 Q. And he was there in November of 2015?

23 A. Yes, he was.

24 Q. And what level would you put him on?

25 A. Again, I -- he was six figure guy. So he

1 would be probably in the director or vice president
2 level. Probably a director. I don't -- again,
3 without -- without knowing these and where this came
4 from, I'm struggling with how I classify people who
5 aren't on it.

6 Q. In your mind, were division managers above
7 directors? Are they in the wrong place on this
8 chart?

9 A. Yes.

10 Q. So should division managers be listed above
11 the directors in an organizational chart?

12 A. Yes.

13 Q. Okay.

14 A. Or at least the way you have these directors
15 classified -- or whoever has these directors
16 classified. Yes, division managers would be well
17 above those.

18 Q. Okay. But they would be below vice
19 presidents?

20 A. Not necessarily.

21 Q. Really? So if the division manager -- a
22 division manager could be a division manager and a
23 vice president?

24 A. I suppose they could be. But, again, we just
25 didn't view the world in those clear cut categories

1 that you're describing.

2 Q. Were vice presidents of Carmike considered
3 officers of the company?

4 A. I don't think so.

5 Q. Yeah, because some -- a lot of times like bank
6 vice presidents are not officers.

7 A. Right.

8 Q. So, for example, would Jon Greer and Jim Lucas
9 have been a level down from Rob Lehman, John Lundin,
10 Jeff Cole, et cetera? Were they a level down?

11 MR. GERAKITIS: If you know.

12 DEPONENT PASSMAN: Well, Rob Collins is listed
13 here as a vice president. He wasn't even there.

14 BY MS. PREBULA:

15 Q. He's not listed as a vice president. He's
16 listed as a CMO. And I understand he was not there
17 in November of 2015.

18 A. Well, forgive me. I may be misreading this
19 chart.

20 Q. No, I see what you're saying that the black
21 header says vice presidents, too.

22 A. Everything underneath it.

23 MR. GERAKITIS: Is this your document?

24 MS. PREBULA: I did not prepare this. I think
25 Crystal Trawick prepared it, but I did not.

1 BY MS. PREBULA:

2 Q. Were the CMO and the CTO above the vice
3 president level?

4 A. The CMO would be.

5 Q. Okay.

6 A. The CTO would not be.

7 Q. Okay.

8 A. I might note that while he's on both lists, on
9 one he's listed as a vice president and on the other,
10 he's listed as a director.

11 Q. He who?

12 A. Gary Green.

13 Q. Well, you already told me you didn't think he
14 was a vice president.

15 A. I don't know.

16 Q. You don't know whether he was a vice president
17 or a director?

18 A. I really don't.

19 Q. So we don't know where he falls on the
20 organizational chart.

21 A. No.

22 Q. Okay.

23 A. You're not suggesting that this is the
24 organizational chart for the company?

25 Q. No, I'm not because we don't have one and

1 that's why I'm asking you the questions I'm asking
2 you.

3 MR. GERAKITIS: Did you make a request for an
4 organizational chart?

5 MS. PREBULA: Can we have that fight off the
6 record? I believe we did. I believe it was
7 called for under our discovery request.

8 MR. GERAKITIS: I'll tell you what, I'll go
9 over them with you during a break and you can
10 point it out.

11 MS. PREBULA: I'll send you a letter.

12 MR. GERAKITIS: You can point it out when
13 we're on a break.

14 MS. PREBULA: I will send you a letter. I'm
15 not going to do that today.

16 MR. GERAKITIS: I'll print it off and have it
17 for you in the morning.

18 BY MS. PREBULA:

19 Q. Have you completed looking at the -- I think
20 it's a phone list?

21 A. Yes.

22 Q. That's what you know today?

23 A. Again, with reservation, I don't know that
24 this is a complete list. I don't know that this is a
25 complete list. I'm commenting based on what I'm

1 looking at and my recollection.

2 Q. Understood. Did -- going back to the
3 conversation you had with Crystal Trawick with regard
4 to the panel discussion she was doing.

5 A. Yes.

6 Q. Did she present you with any written documents
7 for you to review as to what her comments were going
8 to be?

9 A. I don't recall her handing me a written
10 document. She had notes and/or a presentation with
11 her that she was referring to as we discussed it.

12 Q. And did you look at it?

13 A. I don't recall seeing a written document.

14 Q. Well, you just told me she had one with you so
15 you did see it. Did you look at it?

16 A. Yes, she did have it. I don't recall
17 reviewing it.

18 Q. Okay. You believe she went over it with you.
19 She was looking at those notes as she was talking to
20 you?

21 A. I believe she was going over what she believed
22 was important in those notes.

23 Q. Okay. And did -- I gather you did not get or
24 keep a copy of those notes?

25 A. No, I did not.

1 Q. Okay. And you wouldn't have that today?

2 A. I would not.

3 Q. Did you review any of the results -- written
4 results of the investigation that was ongoing into
5 Ms. Trawick or did you just hear about the
6 investigation from the people you discussed?

7 A. I did not, to the best of my recollection,
8 receive or review any report.

9 Q. Okay. Did you -- that's that document I was
10 looking for earlier. Let me show you what's been
11 marked as Plaintiff's Exhibit 50. And you see this
12 is a2nother payroll authorization form for Crystal
13 Trawick. Do you see that?

14 A. Yes.

15 Q. It's dated November 17, 2015?

16 A. Yes, it is.

17 Q. It's noted termination, right?

18 A. Yes.

19 Q. And on this form, the form was requested by
20 Fred Van Noy; is that right?

21 MR. GERAKITIS: Object to the form.

22 BY MS. PREBULA:

23 Q. But it doesn't --

24 A. Yes.

25 Q. -- there's no approval initials on this form,

1 Plaintiff's 50?

2 A. I don't see any.

3 Q. Okay. And the reason for this payroll
4 authorization form says: Resigned 11-17-15; does it
5 not?

6 A. It does.

7 Q. Let me show you what's been marked as
8 Plaintiff's Exhibit 51.

9 A. Okay.

10 Q. And Plaintiff's Exhibit 51 is a separation
11 notice, correct?

12 A. It says separation notice at the top.

13 Q. For Crystal Trawick?

14 A. Yes.

15 Q. And on this separation notice, it says
16 resigned; correct?

17 A. Reason for separation, voluntary quit, resign.
18 Yes.

19 Q. And this form is signed by Sadie Marshall?

20 A. It appears to be, yes.

21 Q. Do you recognize that as her signature?

22 A. I don't.

23 Q. Do you know if this form was submitted to the
24 Georgia Department of Labor?

25 A. I do not know.

1 Q. Do you know if Ms. Trawick was actually given
2 a copy of this form?

3 A. I do not.

4 Q. Both Exhibit 50 and 51 are accurate; are they
5 not --

6 MR. GERAKITIS: Object to the form.

7 BY MS. PREBULA:

8 Q. -- in that Ms. Trawick did not resign?

9 A. No, she did not resign. At the time she was
10 terminated, she was offered the opportunity to resign
11 rather than being terminated.

12 Q. And so both 50 and 51 are incorrect in that
13 Ms. Trawick did not resign, correct?

14 MR. GERAKITIS: Object to the form.

15 DEPONENT PASSMAN: To the best of my
16 knowledge, she never took us up on the offer to
17 resign and was, in fact, terminated.

18 BY MS. PREBULA:

19 Q. And so Plaintiff's 50 and 51 are not accurate,
20 are they?

21 MR. GERAKITIS: Object to the form.

22 DEPONENT PASSMAN: No.

23 BY MS. PREBULA:

24 Q. And these documents, as you can see in the
25 bottom right corner, both were produced by Carmike;

1 correct?

2 A. I don't know that they were or were not.

3 Q. Do you see the Carmike with the number in the
4 bottom right corner of both 50 and 51, correct?

5 A. I do see that.

6 MR. GERAKITIS: For the record, they were both
7 provided to Plaintiff's counsel. They came from
8 Ms. Trawick's personnel file, left in her
9 personnel file.

10 BY MS. PREBULA:

11 Q. Prior to today, have you seen Exhibits 50 and
12 51?

13 A. I have not.

14 Q. To your knowledge, have those documents,
15 Exhibits 50 or 51 been provided to any third party
16 outside of Carmike?

17 A. To my knowledge, no.

18 Q. Did you meet with Ms. Trawick when she was
19 terminated?

20 A. I did not.

21 Q. Did you meet with her after she was
22 terminated?

23 A. I did not.

24 Q. Have you seen Ms. Trawick since her
25 termination?

1 A. Yes, I have seen her.

2 Q. Have you told her you're sorry?

3 A. Not to my recollection, no.

4 Q. Have you walked up to her and given her a hug?

5 A. No, I don't think so; not since her
6 termination.

7 Q. Have you discussed with anyone in the industry
8 Ms. Trawick's termination or employment at Carmike?

9 A. I have not.

10 MS. PREBULA: I'm looking for a document. Do
11 you want to take a short break, mindful of your
12 request?

13 MR. GERAKITIS: I would appreciate that.

14 MS. PREBULA: Okay.

15 (Brief break)

16 (Upon resuming)

17 BY MS. PREBULA:

18 Q. Let me show you what has previously been
19 marked as Plaintiff's Exhibit 20. Have you seen that
20 document before?

21 A. I don't recall seeing this specific document,
22 but I've seen reports that are similar in terms of
23 content.

24 Q. Do you understand this report was prepared by
25 Crystal Trawick?

1 A. I don't understand that, no.

2 Q. Did Fred Van Noy ever discuss this report and
3 the numbers in this report with you or the executive
4 team?

5 A. Generally, yes. And with respect to each of
6 these individual items, I don't know.

7 Q. In the context of discussing Plaintiff's
8 Exhibit 20 with you and the executive team, did Fred
9 Van Noy tell you that Crystal Trawick had provided
10 this to him at his request in support of her seeking
11 additional pay?

12 MR. GERAKITIS: Object to the form.

13 DEPONENT PASSMAN: No, he did not.

14 BY MS. PREBULA:

15 Q. Did he -- did Van Noy bring any information to
16 the executive team in support of Crystal Trawick
17 getting an increase in pay or title?

18 MR. GERAKITIS: Object to form.

19 DEPONENT PASSMAN: No, not that I recall.

20 BY MS. PREBULA:

21 Q. Ever.

22 A. Not that I recall, no.

23 Q. Okay. And certainly not in 2015 to your
24 recollection?

25 A. To my recollection, no.

1 Q. Okay. When you said that Plaintiff's 20 and
2 the numbers were generally discussed with you but not
3 specifics, does that mean that you are aware of the
4 increases that are shown in Plaintiff's 20?

5 A. I would have been aware at the time of this.
6 This looks to me like a year-end review. I prepared
7 every year, a year-end review for the board. And I
8 asked my direct reports to give me summaries of their
9 activities. That's more what this looks like. This
10 doesn't look like a personal achievement sheet.

11 Q. And it's for 2014 year-end, you think?

12 A. That's what it looks like.

13 Q. And is it true that the numbers that are shown
14 -- the marketing numbers generally increased from
15 2012 to 2014? They got better?

16 A. Some of them did. I can't say that they all
17 did. But it's not because I don't think they did. I
18 just don't recall.

19 Q. And some increased more than others, too.

20 A. Yes.

21 Q. Okay. Is it fair to say that between 2012 and
22 2014, the general trend was an increase in marketing
23 results?

24 A. An increase in marketing results?

25 Q. In other words, you had more effective



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1 marketing from 2012 to 2014 than you had before?

2 MR. GERAKITIS: Object to form.

3 DEPONENT PASSMAN: I wouldn't say that, no.

4 BY MS. PREBULA:

5 Q. You had said earlier that you had bad years
6 from 2009 to 2011 and then you started rebuilding in
7 2012. Did I understand that correctly?

8 A. We -- we had -- 2009 was a very, very good
9 year. 2008 was a very, very poor year for company
10 performance.

11 Q. For everybody?

12 A. For our company.

13 Q. It was a bad year economically in this
14 country.

15 A. It was a bad year economically. But 2009 was
16 a very successful year for our company. The period
17 from 2012 to 2014, we had improving results in part
18 because of acquisitions we made; in part because of
19 specific projects that we were doing; and in part
20 just trying to get us into the 21st century.

21 Q. Do you have any documents or reason to believe
22 that the numbers in this Plaintiff's Exhibit 20 are
23 not accurate?

24 A. I do not.

25 Q. Showing you what's been marked as Plaintiff's

1 Exhibit 52. This is appears to be an email from you.

2 Do you see that?

3 A. I do.

4 Q. And does this refresh your recollection that
5 Ms. Trawick did interviews for Carmike on television?

6 A. I didn't dispute earlier; but I do remember
7 sending this note.

8 Q. And you said: A star is born. Great
9 interview, right?

10 A. Right.

11 Q. And referring to Ms. Trawick's interview?

12 A. Yes.

13 Q. Let me show you what's been marked as
14 Plaintiff's Exhibit 53. Do you recognize this as an
15 email from you?

16 A. I do.

17 Q. And this is concerning the panel discussion
18 we've discussed several times that was to be held on
19 March 25th, 2015; right?

20 MR. GERAKITIS: Object to the form.

21 DEPONENT PASSMAN: Just a second. Did you say
22 March 15th or 25th?

23 BY MS. PREBULA:

24 Q. 25th.

25 A. Yes.

1 Q. And does that refresh your recollection that
2 you had a conversation with Crystal about the panel
3 sometime in March of 2015?

4 A. Yes.

5 Q. In fact, you sent this email back to Ms. Kelly
6 Williams-Sowers at Chattahoochee Valley Community
7 College on March 9, 2015; right?

8 A. That's correct.

9 Q. And you say in the email: That's a wonderful
10 acknowledgement of Crystal's accomplishments and
11 value at Carmike and the community; correct?

12 A. I did.

13 Q. And you said: I can't speak for her or her
14 schedule. But would, of course, be proud to have her
15 as a part of the event. And I put the "as" in there.
16 The "as" is missing. You said that, correct?

17 A. I didn't mean to say as.

18 Q. A part of the event.

19 A. To have her a part of the event.

20 Q. And that's what you said in this email?

21 A. That is.

22 Q. Let me show you what's been marked as
23 Plaintiff's Exhibit 54.

24 MR. GERAKITIS: Does this have Bates numbers
25 to it?

1 MS. PREBULA: No, this is in that group that
2 we've been discussing.

3 MR. GERAKITIS: What do you mean it's in that
4 group we've been discussing?

5 MS. PREBULA: About whether or not we were
6 each going to Bates number emails and things that
7 were sent. I don't see a Bates number on this
8 copy.

9 MR. GERAKITIS: All right. Are you saying
10 Plaintiff's 54 has been produced?

11 MS. PREBULA: It is my understanding it has
12 been produced, yes.

13 BY MS. PREBULA:

14 Q. Mr. Passman, do you recognize Plaintiff's 54?

15 A. I'm going to have to read it to tell you.

16 Q. Of course, you are. Take your time.

17 A. (Witness perusing document). I don't remember
18 this document specifically, but I remember this type
19 of interview or document -- this type of document.

20 Q. Do you recognize this as a statement that was
21 prepared for you to deliver for a Q-A presentation by
22 marketing?

23 A. It could very well be. I just simply don't
24 recall this specifically.

25 Q. Do you recognize that this statement was

1 prepared by Crystal Trawick at your request?

2 A. I do not.

3 Q. You did request her to make -- to prepare
4 statements for you from time to time, correct?

5 A. I requested either Crystal, or Shannon, or
6 Fred to prepare statements, press releases for new
7 theater openings, things like this. Yes.

8 Q. But you just don't recognize this particular
9 one?

10 A. There were many times that I was asked
11 questions on panels or made presentations, and I just
12 don't have specific recall of this one.

13 Q. Okay. Let me show you what's been marked as
14 Plaintiff's Exhibit 55. Do you recognize this as a
15 statement that Crystal Trawick prepared for you for a
16 press release?

17 A. I don't remember this one specifically either.

18 Q. Do you remember the content?

19 A. I don't remember -- I don't remember this
20 specifically, no. But I do remember that we did that
21 to that theater and I'm sure we issued a release or
22 made a statement about it.

23 Q. And you don't remember that Crystal prepared
24 this for you?

25 A. No, I don't.

1 Q. Did you keep a copy of your press releases?

2 A. No.

3 Q. A personal copy?

4 A. No.

5 Q. Do you have scrapbook or anything somewhere?

6 A. No.

7 Q. Did your wife?

8 A. No.

9 Q. No file of press releases?

10 A. No.

11 Q. I'm going to show you what's been marked as
12 Plaintiff's Exhibit 56. The reason I'm showing this
13 to you is this is a request from Crystal Trawick to
14 Stored Value Solutions for production of Carmike gift
15 cards in 2013, correct?

16 A. It appears to be, yes.

17 Q. Is it true that you had to personally approve
18 orders for Carmike gift cards?

19 A. No.

20 Q. Who approved them?

21 A. Anyone on the executive team could approve
22 them.

23 Q. Who did approve them?

24 A. I don't recall approving this specific one. I
25 do recall looking at designs of the cards, but I

1 didn't approve the quantity purchase. That would
2 have been -- it should have been Fred Van Noy.

3 Q. And would these kinds of expenses also been
4 paid through the Comdata system?

5 A. I don't believe so, no.

6 Q. How would these be paid?

7 A. I believe they would be paid through the
8 accounts payable system.

9 Q. Which is what? Doesn't it have another name?

10 A. I don't know. I'm sorry.

11 Q. I want to say Nexus?

12 A. That's probably correct.

13 Q. Okay. And, again, in the accounts payable
14 system whether it's called Nexus or not --

15 A. Right.

16 Q. -- Ms. Trawick couldn't approve expenditures
17 like this?

18 A. I don't know what her approval level was. We
19 did have assigned approval levels throughout the
20 company.

21 Q. Was that in writing?

22 A. It was.

23 Q. Who kept that document?

24 A. I'm guessing it was the compliance department.

25 Q. And who would be in charge of that?

1 A. In 2013, I'm not sure.

2 Q. How about November?

3 A. Fred Friedel would be today or as of November
4 of 2015.

5 Q. What is TRC?

6 A. Total Resource Campaign, I believe, is what
7 you're referring to. Chamber of Commerce.

8 Q. Can you explain Carmike's participation in
9 that?

10 A. I can try. The Chamber of Commerce tried to
11 raise funds on an annual basis in a real short period
12 of time by selling sponsorship to future Chamber
13 events throughout the calendar year. And Carmike was
14 an important member of the Chamber of Commerce and,
15 therefore, participated in and I personally
16 participated in the campaigns.

17 Q. Okay. And do you know how many TRC
18 sponsorships Carmike did?

19 A. I don't.

20 Q. It was a lot, wasn't it?

21 A. It was several.

22 Q. Okay. The -- when you say that you
23 participated in sponsorships for the Chamber, did you
24 participate -- meaning Carmike, not you personally --
25 but Carmike participated in many sponsorships

1 throughout the community; did it not?

2 A. I would say several. I don't know that many
3 is an accurate definition. Certainly several.

4 Q. And several you said is more than three or
5 four?

6 A. It is.

7 Q. Okay. And part of Ms. Trawick's job was to
8 seek out those sponsorships, was it not, to promote
9 Carmike?

10 A. I don't know that I would say it was to seek
11 out sponsorships. But it was to certainly be
12 responsive to requests for sponsorships.

13 Q. Okay. Did -- did you consider sponsorships to
14 be marketing of Carmike?

15 A. I did.

16 Q. And were there any written rules on which
17 sponsorships could be accepted?

18 A. Not that I recall.

19 Q. Is it -- was it the normal or general
20 procedure that if Ms. Trawick saw a sponsorship or
21 got a request for a sponsorship, that she would
22 present it to Crystal (SIC) De La Cruz for your
23 review before that was approved?

24 A. That would not be unusual, but I don't believe
25 that one hundred percent of the sponsorships that

1 were requested of Carmike made it to my office. I
2 would hope that they would be screened.

3 Q. By whom?

4 A. By Crystal.

5 Q. And then all sponsorship checks would have to
6 go into one of the two systems: Comdata or Nexus or
7 whatever it was called, for approval by somebody
8 else?

9 A. No.

10 Q. Crystal had check writing authority for a
11 sponsorship?

12 A. No, she did not.

13 Q. Okay. So what was the procedure according to
14 your understanding?

15 A. Depending on what the activity was, whether --
16 and in what category of marketing we deemed
17 appropriate, it might be out of our benevolence fund
18 if it was a 501(c)(3) or a charitable organization;
19 or something that included employees outside the
20 corporate office. And those were handwritten checks.

21 Q. Okay. So there was a separate benevolence
22 fund for charitable organizations?

23 A. Yes.

24 Q. And who was in charge of that fund, if you
25 will?

1 A. The executive team.

2 Q. So you would have to approve 501(c)(3)
3 donations or sponsorships?

4 A. Most.

5 Q. Most. And -- but Crystal couldn't approve
6 those?

7 A. Not that I'm aware of.

8 Q. When you say something for employees outside
9 the company, do you mean like the Steeple Chase
10 events and other Columbus events that people went to?

11 A. No.

12 Q. What do you mean?

13 A. No, I meant things like -- John Kellin, for
14 instance, the supervisor on the seat job wanted to do
15 a United Way benefit bowling tournament. Carmike's
16 contribution toward that event came out of the
17 benevolence fund.

18 Q. And Carmike did routinely sponsor Steeplechase
19 in Columbus, right?

20 A. Carmike was a pretty significant sponsor of
21 the Steeplechase since 2009, I believe, or 2010.

22 Q. And you were involved in that personally,
23 weren't you?

24 A. I was not.

25 Q. So prior to Ms. Trawick being in the marketing

1 department, Carmike was a significant sponsor of
2 Steeplechase?

3 A. Yes.

4 Q. And it took employees to Steeplechase?

5 A. I don't know that. All members of the
6 executive team were offered tickets. Beyond that,
7 I'm not sure how. But we didn't actually take people
8 to it.

9 Q. I don't mean physically put them on the bus.

10 A. I'm sorry.

11 Q. I mean, you allowed employees to go to
12 Steeplechase on Carmike tickets.

13 A. As tickets were available.

14 Q. Right. If the executive team didn't need it,
15 you offered them to employees. And if you couldn't
16 fill the tent, you included spouses and employees.

17 A. That's quite possible.

18 Q. Okay. The -- was -- other than you, was
19 anyone else at Carmike involved in the support of the
20 Chamber?

21 A. Yes.

22 Q. Who?

23 A. My assistant.

24 Q. Crystal (SIC) De La Cruz?

25 A. It's Lisa De La Cruz.

1 Q. Why do I do that? Lisa De La Cruz. Actually,
2 I know a Crystal De La Cruz. That's the problem.

3 A. Oh.

4 Q. So I apologize for that, to both of them.
5 Anyone else?

6 A. Yes.

7 Q. Who?

8 A. Crystal Trawick.

9 Q. Anybody else?

10 A. Yes, but I can't tell you their names. The
11 Chamber created a program called the Young
12 Professionals or -- I think it was called the Young
13 Professionals. And with our sponsorship, our
14 corporate sponsorship of the Chamber and our
15 activities and my involvement in the Chamber, we were
16 offered a certain number of Young Professional
17 memberships and we basically offered it to several
18 corporate employees.

19 Q. Okay. Let me show you what's been marked as
20 Plaintiff's Exhibit 57. And this is a 2012 TRC
21 kick-off for the Chamber. Do you see that?

22 A. I do.

23 Q. And do you see that you were a vice chair that
24 year as well as Dan Ellis from Carmike on the 8-27
25 time slot?

1 A. Yes, I do.

2 Q. And that's accurate?

3 A. Yes, it is.

4 Q. Does that refresh your recollection that Dan
5 Ellis was involved?

6 A. He certainly was.

7 Q. Let me show you what's been marked as
8 Plaintiff's Exhibit 58. This appears to be a trade
9 agreement contract with the TRC. And I can't read
10 that date. But can you read that date? It appears
11 to be 2012 based upon the signature line.

12 A. That date there?

13 Q. Yes.

14 A. It appears to be 2012 to me as well.

15 Q. Okay. And this appears to be signed by Dan
16 Ellis, correct?

17 A. I think so.

18 Q. Okay. Do you recognize that as his signature?

19 A. I wouldn't dispute this being his signature,
20 no.

21 Q. Do you recognize it as his handwriting?

22 A. I don't.

23 Q. Okay. And this appears to be a 52-week
24 Carmike pass that you are donating to the TRC
25 auction; is that correct?

1 A. This appears to me to be an item that we were
2 donating to Biddin' on the banks auction.

3 Q. For the TRC campaign. I mean, it's the symbol
4 at the top.

5 A. Well, I see TRC at the top. But it was a
6 sponsorship probably sold in the TRC campaign. Is
7 that what you mean?

8 Q. Correct.

9 A. Yes.

10 Q. What did you expect to get out of this one?

11 A. Out of this one?

12 Q. Out of any of these sponsorships?

13 A. Out of any sponsorships that we did in the
14 TRC?

15 Q. Sure. Any sponsorships in general. I mean,
16 wasn't it to promote Carmike?

17 A. There were several reasons. One was to be a
18 good corporate citizen. Whether that's promotion of
19 not, I don't know. But to be a good corporate
20 citizen.

21 The second is to promote Carmike and make
22 people see that Carmike is a good corporate citizen
23 so that hopefully they would frequent our theaters.

24 And the third and final was to be a desired or
25 preferred employer in the community.

1 Q. Let me show you what's been marked as
2 Plaintiff's 59. Does the top of this refresh your
3 recollection that these were some of the individuals
4 who were involved in the Young Professional's group?

5 A. I think they were.

6 Q. Okay. And they include Ms. Trawick, Ms. De La
7 Cruz, Mr. Sailors, Mr. Mayton, Ms. Woods, Ms. Watley
8 and Mr. Harris. But Mr. Harris was not a Carmike
9 employee, right?

10 A. I don't -- that's Ms. Harris. Ryan is a
11 female.

12 Q. I apologize.

13 A. She was the membership director at Country
14 Club of Columbus, I think.

15 Q. But she was not also an employee of Carmike,
16 correct?

17 A. She was not. Heather Watley was not. This
18 was the TRC, for lack of a better term, sales team.

19 Q. Got you.

20 A. It included Carmike employees and non-Carmike
21 employees.

22 Q. Okay. And did Carmike sponsor events at the
23 Columbus Country Club?

24 A. We had our annual Christmas or holiday party
25 at the Country Club of Columbus. We may have

1 sponsored other things. I just don't know.

2 Q. And you did that for the same reasons you just
3 stated, right?

4 A. Well, the holiday party was employee
5 relations.

6 Q. And the other reasons for sponsoring events
7 there was...

8 A. Would have been to promote Carmike as we
9 discussed.

10 Q. Right. Right. Let me show you what's been
11 marked as Plaintiff's Exhibit 60. This appears to be
12 again a sponsorship for the Biddin' on the Banks
13 auction and dinner as part of TRC. Is that an
14 accurate depiction?

15 A. Yeah. Well, again, I take exception to it
16 being a part of TRC. The sponsorship was sold
17 through TRC. But it was for an event that was not
18 TRC -- we weren't sponsoring TRC. We were sponsoring
19 an event of the Chamber and it was sold in the TRC
20 campaign.

21 Q. And this one is a dinner that you are
22 sponsoring, correct?

23 A. It says name of sponsorship, Biddin' on the
24 Banks auction and dinner as presenting sponsor.

25 Q. And then as a part of this, you got two

1 reserved tables of eight.

2 A. That's what this says.

3 Q. And that would mean that 16 people from
4 Carmike could go to this event.

5 A. It would mean 16 people could go paid for by
6 Carmike. They may or may not be from Carmike.

7 Q. You tried with the executive team first and
8 work your way down?

9 A. Well, generally when we had community
10 sponsorship, we would revert first to the executive
11 team so that they, in fact, would be in the
12 community. And from there it could go anywhere. We
13 could take a vendor. We could give them to
14 employees. It could be any number of things.

15 Q. Okay. And this was signed by Dan Ellis?

16 A. It appears to be Dan's signature, yes.

17 Q. What does the instruction on the first page:
18 Allocate to Shannon, Crystal and Kim mean?

19 A. I think this is for sales credit in the TRC
20 campaign.

21 Q. Okay. And I just noticed two things are
22 attached and the second sheet should not be part of
23 it. If you'll just pull that off. It's not part of
24 the exhibit, it's a separate document.

25 MR. GERAKITIS: So 696 is not part of

1 Plaintiff's Exhibit 60?

2 MS. PREBULA: No, they're separate documents.

3 MR. GERAKITIS: Okay.

4 BY MS. PREBULA:

5 Q. So you think that the allocate to Shannon and
6 Crystal and Kim was just for sales credit?

7 A. Yes.

8 Q. And for sales credit through Carmike or
9 through the Chamber?

10 A. Through the TRC campaign. During the campaign
11 in order to incentivize people to go sell
12 sponsorships, TRC had awards and rewards. And this
13 was, I believe, allocating that \$7500 to those three
14 people.

15 Q. Okay. And let me show you what's been marked
16 as Plaintiff's 61.

17 A. Okay.

18 Q. And this is a similar corporate sponsor
19 contract?

20 A. Appears to be, yes.

21 Q. But this time it's for Young Professionals,
22 Cocktails and Company, right?

23 A. That's what it appears to be, yes.

24 Q. What was the purpose of sponsoring a cocktail
25 party for Young Professionals?

1 A. The purpose would be to promote Carmike.

2 Q. And that's consistent with any other
3 sponsorship you might do?

4 A. It is.

5 Q. And this one says: Allocate to Lisa. So that
6 would be Lisa De La Cruz?

7 A. I assume so.

8 Q. And, again, signed by Dan Ellis.

9 A. Looks like it.

10 Q. Okay. The -- did Mr. Ellis sign or approve
11 all TRC requests or sponsorships?

12 A. I don't know.

13 Q. Was he -- I mean, was he responsible for doing
14 that or you don't -- do you know?

15 A. Not necessarily.

16 Q. Okay. So someone else could have approved it.
17 We just happen to have reports that he did?

18 A. Yeah. I wish we had dates on these so I could
19 answer your question more fully.

20 Q. Uh-huh. (indicating in the affirmative).
21 Some of them -- the first couple had a date where he
22 put it in there, but these last two do not.

23 Let me show you what's been marked as
24 Plaintiff's Exhibit 52 -- excuse me -- 62. This
25 appears to be a comparison of Carmike sponsorships

1 during 2014 compared to what you might do in 2015.

2 The -- and were all of these through Total Resource
3 Campaign?

4 A. I don't know.

5 Q. Okay. Do you recognize them all? You clearly
6 recognize the Young Professionals as part of the
7 Chamber, right?

8 A. Yeah, I recognize each one of these events.

9 Q. Okay.

10 A. I just can't state with accuracy whether the
11 numbers are right for each of the years or whether
12 it's a complete listing.

13 Q. Right. But in 2 -- do you recognize that the
14 numbers for 2014 are accurate?

15 A. I don't recognize that.

16 Q. Okay. But it shows that Carmike did various
17 things from being just investors to sponsors to
18 sponsoring a T-shirt or a party or a frame?

19 MR. GERAKITIS: Object to the form.

20 BY MS. PREBULA:

21 Q. Is that right?

22 A. Would you ask that again? Sorry.

23 Q. The -- Plaintiff's 62 shows that Carmike had
24 different kinds of sponsorships. This one shows
25 you're the investor starting at the bottom and the

1 Chamber membership. You were presenting sponsor for
2 some of these. You were a T-shirt sponsor. You were
3 a party sponsor. And you were a frame sponsor for an
4 art event. I mean, you did different things.

5 A. That's correct. Yes.

6 Q. And you recognize each of these events on
7 Plaintiff's 62?

8 A. I do recognize each of these events.

9 Q. Okay. And is your statement the same that the
10 reason for Carmike sponsoring each of these events is
11 promoting Carmike and being a good corporate citizen?

12 A. Yes.

13 Q. Okay. Let me show you what's been marked as
14 Plaintiff's Exhibit 63. At the top is an email from
15 you dated January 30, 2015 to Crystal Trawick and her
16 husband; correct?

17 A. I'm sorry. What was your question?

18 Q. It's an email from you to Crystal Trawick and
19 her husband dated January 30th, 2015.

20 A. Yes.

21 Q. And you copied your then fiance on it -- or
22 was she your wife at that time?

23 A. She was not my wife at that time.

24 Q. Okay. And it's a promotion of Crystal based
25 upon her performance for TRC from the Columbus

1 Regional Research Institute, right?

2 A. I'm sorry. I have to read it. I don't recall
3 what this is for.

4 Q. You can always take time to read it.

5 A. (Witness perusing document). Let me ask you
6 to repeat the question.

7 Q. Sure. Basically this email -- the bottom of
8 it is from Joel Ames at Liberty Utilities, right?

9 A. Yes.

10 Q. And he's saying: Crystal is one of the top
11 three performers overall on TRC for 2015.

12 A. I'm sorry. I don't see where he's saying
13 that.

14 Q. Look at page two: Top performers overall.
15 Crystal Trawick. Keep going, run your finger down
16 the page. Top performers overall. Keep going.
17 There it is. Do you see that?

18 A. I do.

19 Q. So she was one of the top performers overall,
20 right?

21 A. Yes.

22 Q. And so Joel Ames shared that news with
23 Christine Senn and she shared it with you.

24 A. Yes.

25 Q. And she says: I've seen these three same

1 three fabulous women -- because there are two other
2 listed -- be top performers at least two years in a
3 row now. You thought that was a good thing?

4 A. I did.

5 Q. And so you shared it with Mr. and Ms. Trawick.

6 A. I did.

7 Q. And as part of this, Crystal was getting good
8 press for Carmike.

9 A. Yes.

10 Q. Did you -- and I think you may have answered
11 this and I apologize if you have. Did you review
12 every sponsorship that went through that Crystal
13 proposed?

14 A. For the TRC?

15 Q. For any sponsorship?

16 A. No, I did not.

17 Q. Let me show you what has been marked as
18 Plaintiff's Exhibit 64. Do you recognize this as an
19 email from you to Joel Ames?

20 A. I do.

21 Q. And then there's an email below from Joel to
22 you.

23 A. Yes.

24 Q. Okay. And it's again saying -- it's in March
25 19 of 2015, that Crystal has had tremendous success

1 with the Total Resource Campaign, correct?

2 A. It does.

3 Q. And you replied to him: Thanks, Joel.

4 Crystal is a very special person. We're lucky to
5 have her in the community and at Carmike. You said
6 that?

7 A. Yes.

8 Q. And, again, you thought that was important for
9 Carmike?

10 A. I thought it was a good thing, yes.

11 Q. I mean, you wouldn't have made sponsorships if
12 you didn't think it was going to promote the
13 business, right?

14 A. That's correct.

15 Q. So were you involved at all in sponsorships
16 that Crystal did for Quaderal; do you recognize that?

17 A. I do not.

18 Q. And were you --

19 A. The first time I heard Quaderal was during
20 this termination process.

21 Q. So you were not involved at all in --

22 A. No.

23 Q. -- the approval of Quaderal or reviewing
24 Quaderal at all?

25 A. No, I was totally unaware of Quaderal.

1 Q. Did Lisa De La Cruz bring Quaderal to you as a
2 proposed sponsor?

3 A. No, she did not.

4 Q. Did she have the power or the authority to
5 approve sponsorships to then be sent on for further
6 approval up the line?

7 A. She did not.

8 Q. You had told me earlier that it was not
9 unusual for Ms. Trawick to bring a proposed
10 sponsorship to De La Cruz who would then say David
11 likes it or he doesn't like it. That that was not
12 unusual, right?

13 A. That was not unusual.

14 Q. And it's your testimony that Lisa De La Cruz
15 did not tell you about Quaderal?

16 A. It is.

17 Q. Did -- were you involved in the Pursuing
18 Justice sponsorship?

19 A. I don't know what that is.

20 Q. Okay. So that would be a no?

21 A. That would definitely be a no.

22 Q. Okay. And were you involved in any
23 sponsorships at the Country Club -- Columbus Country
24 Club for Carmike?

25 MR. GERAKITIS: Object to the form.

1 BY MS. PREBULA:

2 Q. Any sponsorship that might have been held at
3 the Country Club, were you involved in those?

4 A. That the Country Club was putting on?

5 Q. Either way. Either the Country Club was
6 putting on some -- could have been part of the
7 Chamber, anything that was held there?

8 A. Oh, none that I recall. But I would not be
9 surprised if events were held at the Country Club of
10 Columbus that we were sponsoring, the Chamber or
11 whatever.

12 Q. Okay. You said to me that you were not sure
13 if Cathryn Smitherman was still at Carmike in
14 November of 2015.

15 A. That's correct.

16 Q. Do you recall whether or not she left early?

17 A. I believe that was about the time she left. I
18 just don't recall the dates.

19 Q. Was she terminated?

20 A. No.

21 Q. Did -- did you ever discuss the investigation
22 with Cathryn Smitherman?

23 A. No.

24 Q. And, obviously, I'm talking about the
25 investigation of Ms. Trawick.

1 A. I understood.

2 Q. In addition to the people that we discussed on
3 Plaintiff's 49, I'm just wondering if this is a
4 different person. There's a Brian Dobson listed.

5 A. Yes.

6 Q. Was there also a Brian Dobbs or is that --

7 A. I think it's probably a typo.

8 Q. It's the same guy. Okay.

9 A. My guess is it's the same guy.

10 Q. My guess as well.

11 MR. GERAKITIS: I'm going to object to the
12 form of the question.

13 BY MS. PREBULA:

14 Q. Are you aware of a Carmike employee named
15 Brian Dobbs?

16 A. I am not.

17 Q. Okay. All right. So who was responsible for
18 doing the annual reviews for Crystal Trawick from
19 2012 to November 2015?

20 A. Fred Van Noy.

21 Q. Okay. Was there anyone else who would have
22 done a review with her?

23 A. No, not to my knowledge.

24 Q. Okay. It was not company policy for other
25 people with whom she worked to do a performance

1 review?

2 A. There might have been like a 360 evaluation
3 form that could have been part of that process. But
4 the actual review performance review would be her
5 supervisor, Fred Van Noy.

6 Q. If there were there any 360 evaluation forms,
7 would they be part of her personnel file?

8 A. I don't know.

9 Q. Should they?

10 A. Not necessarily.

11 Q. Where would they be stored?

12 A. I don't know where they would be stored.

13 Q. What would a 360 evaluation form do or be?

14 A. Well, I can't answer with regard to Crystal.
15 But I can tell you with regard to the CFO. I would
16 send a survey to all members of the audit committee
17 of the board of directors. And I would list out
18 several things to evaluate Richard's performance on.
19 And then that would become a part of his bonus
20 computation for his performance.

21 That type of thing was repeated in various
22 areas of the company. I don't know how many. I
23 don't know who. But that process that I used was
24 used by others in the company for similar type things
25 at employee levels rather than board levels.

1 Q. And you call those 360 evaluation forms?

2 A. I'm calling them that today. I don't know
3 what they would have been called then. It might have
4 been a peer evaluation. It might have been a
5 department -- I don't recall a title.

6 Q. That was my next question.

7 A. And it wasn't a form.

8 Q. It was not a form. It would be an email?

9 A. It again would be up to evaluator of the
10 employee as to whether to consult or get input from
11 any number of parties whether they be inside or
12 outside the company.

13 Q. So when you say a 360 evaluation form, you
14 just mean there might be some input from somebody
15 else?

16 A. That's correct.

17 Q. Not a specific form that it would be on.

18 A. That is correct.

19 Q. Did -- other than the people that you
20 discussed the investigation with, which you have told
21 me are Fred Van Noy, Dan Ellis, and I believe you
22 said Fred Friedel.

23 A. No, Richard Hare.

24 Q. Richard Hare. Other than that, did you
25 discuss the investigation of Ms. Trawick with

1 anybody?

2 A. I did not.

3 Q. Okay. The -- have you asked anybody to
4 prepare any written statement or email to you about
5 Ms. Trawick's performance between 2012 and 2015?

6 A. I have not.

7 Q. Okay. Have you asked anybody to prepare any
8 email or statement with regard to the investigation?

9 A. I have not.

10 Q. Have you asked anybody to prepare a statement
11 with regard to her termination?

12 A. I have not.

13 Q. Okay. I know we've been here a long time
14 today and you couldn't tell me the name of the AMC
15 sub. Has that come into your memory yet?

16 A. No.

17 Q. Did you sign the papers for the sale with the
18 AMC sub or with AMC corporate?

19 A. I don't recall. Most of the paperwork that
20 was signed was signed by Dan Ellis, not by me.

21 Q. Did the employees that went to work for AMC go
22 to work for AMC corporate or the AMC sub?

23 A. I don't know with certainty. I would assume
24 AMC corporate.

25 Q. What employees do you know other than Shannon

1 Sailors and Dan Ellis have gone to work for AMC?

2 A. David Glass. Probably the majority of our
3 theater managers. A few of our district managers.
4 And those are all that I can recall off the top of my
5 head.

6 Q. Which district managers do you know?

7 A. I have forgotten. With AMC, you mean?

8 Q. Correct.

9 A. I have forgotten.

10 Q. Do you know any of them?

11 A. Not with -- not with certainty, no.

12 Q. Do you know -- you don't even have a
13 reasonable basis for saying who they are?

14 A. I'm sorry, I just don't have the recollection.

15 Q. Understood. The -- when -- did you have any
16 input into the discovery responses to interrogatories
17 and requests for production of documents in this
18 case?

19 A. I did not.

20 Q. Did you review any of the responses?

21 A. I did not.

22 Q. Did -- are you aware of any investigation of
23 Ms. Trawick's claims in her EEOC charge or complaint
24 that were conducted by counsel? Don't tell me what
25 they were. Just let me know if counsel actually

1 conducted any investigation.

2 A. I'm not aware.

3 Q. Meaning you're not aware of any investigation
4 conducted by counsel?

5 A. I'm not aware of any investigation conducted
6 by counsel.

7 Q. Did you have -- I understand that you were not
8 the decision-maker on all compensation requests or
9 increases? Did you -- were you the decision-maker on
10 any bonuses or bonus structures for Ms. Trawick?

11 A. Yes.

12 Q. When Ms. Trawick was out on maternity leave in
13 2014, why was her bonus structure based on a whole
14 year without taking into consideration her leave of
15 absence?

16 A. I don't know.

17 Q. So what input did you have in establishing the
18 bonus or bonus structure for Ms. Trawick?

19 A. I would have approved all of Fred's direct
20 reports' bonus plans. And then together with the
21 controller of the company, would review the
22 performance reported for bonus payouts.

23 Q. And that's Fred Van Noy?

24 A. No, the controller would be Jeff Cole.

25 Q. No, you said you would have approved all of

1 Fred's direct reports?

2 A. Oh, yes. I'm sorry.

3 Q. Fred Van Noy.

4 A. Fred Van Noy.

5 Q. And you would review the bonus then with Jeff
6 Cole, the controller.

7 A. After year-end.

8 Q. If two employees were both given fours and
9 fives, how would they have different bonus
10 structures?

11 A. I'm not sure I understand the question. What
12 do you mean bonus structure?

13 Q. On your performance evaluations, you rate your
14 employees one through five on various categories,
15 right?

16 A. Okay.

17 Q. And different employees could achieve
18 different dollar amounts, right?

19 A. Yes.

20 Q. And they had different bonus structures.

21 A. Yes.

22 Q. So can you explain to me why -- just
23 specifically in this case, why Shannon Sailors' bonus
24 structure would be higher than Ms. Trawick's?

25 A. I can't without reviewing it.

1 Q. And what would you need to review it?

2 A. What the duties were, what the bonus criteria
3 were.

4 Q. When you set up a bonus structure, did you
5 establish written criteria?

6 A. We established specific objectives to be met
7 and allocated a percentage of the bonus target for
8 each individual.

9 Q. And was that in writing?

10 A. Yes, it was.

11 Q. Provided to the individual?

12 A. Yes.

13 Q. The -- so when you say you were involved in
14 establishing the bonuses, you didn't come up with the
15 criteria, et cetera. Fred Van Noy would present it
16 to you and you would either agree or make changes or
17 disagree; is that fair?

18 A. That is correct.

19 Q. Did you ever make any changes to the bonus
20 structure proposed for Crystal Trawick?

21 A. I don't recall.

22 Q. Did you ever make any changes to the bonus
23 structure proposed for Shannon Sailors?

24 A. I don't recall.

25 Q. Was there a policy of the company of having

1 written job descriptions for each position?

2 A. I don't know.

3 Q. Did you ever see written job descriptions for
4 each position?

5 A. I've seen written job descriptions, but I
6 don't know for each position.

7 Q. Was there a manual or book in which job
8 descriptions were maintained?

9 A. I don't know.

10 Q. You've never seen one?

11 A. I've never seen a book with all job
12 descriptions.

13 Q. Okay. What role did Dan Ellis play in the
14 decision to terminate Ms. Trawick?

15 MR. GERAKITIS: Object to the form.

16 DEPONENT PASSMAN: Dan was included in the
17 discussions with Crystal about the investigation
18 and was part of the decision to terminate her.
19 And I believe he was also part of the discussion
20 at termination, the meeting with her.

21 BY MS. PREBULA:

22 Q. What role did Richard Hare play in the
23 termination?

24 A. Member of the executive team that listened to
25 Dan and Fred's -- Fred Van Noy's report on the

1 activities that were going on and the recommendation.

2 Q. Anything else for Richard Hare?

3 A. I don't think so.

4 Q. And what role did Fred Van Noy play?

5 A. Fred was the -- same role as Dan. He was the
6 one who met with Crystal and -- both before and at
7 termination. And he, along with Dan, reported to the
8 rest of the executive team that was there.

9 Q. And was the rest of the executive team anyone
10 other than you -- I mean, were there only four people
11 there: You, Dan Ellis, Richard Hare and Fred Van
12 Noy?

13 A. That's correct.

14 Q. So the other members of the executive team
15 were not present.

16 A. There was only one other member and he was not
17 present.

18 Q. Okay. And the -- who actually made the
19 recommendation to you for termination?

20 A. Fred and Dan.

21 Q. Both of them said it at the same time?

22 A. I don't recall which one of them might have
23 said it first, but I would -- I would guess it would
24 be Dan.

25 Q. Did you discuss with HR, the -- meaning Sadie

1 Marshall, the decision to terminate?

2 A. I did not.

3 Q. When we asked you in interrogatories about the
4 duties and responsibilities in the marketing
5 department, you referred us back to documents which
6 we produced. Are you -- is it your position -- and
7 you may not know. Is it your position that the
8 documents that we produced with regard to the duties
9 and responsibilities of the persons in the marketing
10 department are correct and complete?

11 A. I never received an interrogatory and,
12 therefore, I --

13 Q. You don't know?

14 A. -- I have no response to it.

15 Q. Okay. The -- did you have any input into
16 making a decision as to whether you would treat
17 Crystal Trawick as an exempt or nonexempt employee?

18 A. At the time of her termination or just
19 general?

20 Q. Any time while she was employed in the
21 marketing department.

22 A. No. No, I did not.

23 Q. Who made that decision?

24 A. I don't know who made it.

25 Q. And Crystal Trawick routinely worked more than

1 40 hours a week, right?

2 A. I don't know.

3 Q. Well, you know her travel schedule, don't you?

4 A. I don't.

5 Q. You don't. Are you aware of any documents
6 that would show her actual work hours?

7 A. No.

8 Q. Did Carmike -- Carmike didn't require people
9 to clock in and clock out, right?

10 A. Not at corporate.

11 Q. Yeah. Okay. And when I say clock in and
12 clock out, I don't mean like a factory. Crystal
13 didn't have to turn in her hours that she worked to
14 you and Carmike did not keep a record of them, right?

15 A. I believe that's correct.

16 Q. Okay. Are you aware of any -- I think I asked
17 you earlier if there were any warnings or warning
18 notices in Crystal's personnel file. I think you
19 said no, that you weren't aware of any.

20 A. I'm not aware of any.

21 Q. Are you aware of any reprimands or any other
22 disciplinary actions that Ms. Trawick received prior
23 to her termination in November of 2015?

24 A. I don't know that I would call them
25 reprimands. But I do know there were areas where we

1 were -- we were faced with either customer complaints
2 in the customer call center for unresponsiveness by
3 the people that she was managing, or studio
4 complaints regarding our marketing efforts that were
5 unsatisfactory to them.

6 I don't know that that resulted in a
7 reprimand, but they certainly raised the interest
8 level of the executive team. And Fred met with
9 Crystal over, I believe, each of those.

10 Q. Weren't those complaints actually against
11 Shannon Sailors?

12 A. I don't believe so, no.

13 Q. Wasn't there a studio that absolutely refused
14 to work with Shannon Sailors because he was
15 nonresponsive?

16 A. I don't believe so. I don't know though.

17 Q. And it's your understanding that she did not
18 receive any reprimands and there's nothing in her
19 personnel file?

20 A. Not that I'm aware of, no.

21 Q. The -- when you completed the sale with AMC,
22 did you -- did anyone prepare a list of documentation
23 that was being turned over to AMC?

24 A. I don't know.

25 Q. Have you seen such a list?

1 A. I have not.

2 Q. Did the IT department or anyone from the IT
3 department go to AMC?

4 A. Not that I'm aware of. You mean permanent?

5 Q. Permanent or temporary.

6 A. Well, during the period preceding and
7 following the acquisition, several employees in
8 accounting and IT were retained for a period of time
9 as part of that transition.

10 Q. Do you know who they were? In IT, let's start
11 there.

12 A. I only know a few.

13 Q. Tell me who you know.

14 A. I believe Terra was one of them.

15 Q. Terra Hardwick?

16 A. Yes. The rest that I would know would be in
17 the accounting group.

18 Q. And who were they?

19 A. Jeff Cole, Greg Wiggins. And I think Dawn
20 Saint or Smith.

21 Q. And --

22 A. Gus -- I'm not done.

23 Q. Okay. Gus.

24 A. Gus McMurray. Fred Friedel, although he was
25 not technically in the accounting group. He was in

1 compliance.

2 Q. Uh-huh. (indicating in the affirmative).

3 A. Did I say Greg Wiggins?

4 Q. You did.

5 A. Yes, those are the names that I recall.

6 Q. Okay. Did anyone in HR stay for the
7 transition period?

8 A. I think so, but I don't recall with
9 specificity.

10 Q. Did Carmike retain any documents that were
11 records of any social media accounts in which Carmike
12 participated?

13 A. I don't know.

14 Q. Did Carmike issue paychecks or was it direct
15 deposit system?

16 A. The vast majority were on direct deposit.

17 Q. And were employees provided simply with pay
18 stubs?

19 A. Electronic copies of what you might call a pay
20 stub, but pay record.

21 Q. Pay record. Okay. Did Carmike retain copies
22 of those?

23 A. I don't know.

24 Q. Okay. Are you aware of any medically related
25 leave that Ms. Trawick took other than the maternity

1 leave we previously discussed?

2 A. I am not.

3 MS. PREBULA: I think I may be through if we
4 can just take a five minute break, I'll double-
5 check.

6 (Brief break)

7 (Upon resuming)

8 BY MS. PREBULA:

9 Q. The one person I have on my list that we have
10 not discussed is John Greer. Can you tell me what
11 his function was?

12 A. John Greer was a -- it depends on what year
13 you're talking about. But in November of 2015, John
14 Greer was a division manager. He and Jim Lucas each
15 handled about half of the theater locations in terms
16 of management oversight.

17 Q. Okay. I thought -- and I had two of them
18 listed with the same name. Was there a second
19 employee named John Greer?

20 A. Not to my knowledge.

21 Q. And did he, between October 2012 and November
22 of 2015, was he in the same division manager role?

23 MR. GERAKITIS: We're still talking about John
24 Greer?

25 MS. PREBULA: We are.

1 DEPONENT PASSMAN: At one point -- and I don't
2 remember the year that he was promoted. But at
3 one point, he was a district manager. And I'm
4 guessing it would have been in 2012, but I just
5 don't recall. I'm sorry. Fred Van Noy would be
6 able to give you that.

7 BY MS. PREBULA:

8 Q. The -- how did you make the decision of
9 whether a sponsorship would be sent to the
10 benevolence group or to accounts payable to be paid
11 or benevolence fund?

12 A. Yeah. It was basically boiled down to two
13 things. It might be that the benevolence fund didn't
14 have funds sufficient to pay, in which case it would
15 go directly to AP. In other cases, it didn't feel
16 like it was benevolence. It felt more like it was
17 advertising and in which case it would go to AP.

18 Q. And who would make that call?

19 A. Usually it would be me in conjunction with the
20 entire executive team or a member of the executive
21 team. The Chamber would be one of those categories
22 that's really hard to define whether it's a donation
23 or a, if you will, an advertising type expenditure.

24 Q. So generally donations would go to benevolence
25 and advertising would go to accounts payable.

1 A. Generally.

2 Q. And how was the benevolence fund funded?

3 A. We would take a small percentage of ticket
4 sales and every quarter or so calculate the amount of
5 money that was -- that it would derive and put it
6 into the benevolence fund. It would be transferred
7 out of general corporate.

8 Q. And who would approve that?

9 A. The transfer?

10 Q. Uh-huh. (indicating in the affirmative).

11 A. It was done by the controller's office based
12 on the formula that was in effect for that year.

13 Q. And the board would approve the formula?

14 A. The board of directors?

15 Q. Correct.

16 A. No.

17 Q. Who would approve the formula?

18 A. I would or the executive team would. The
19 formula had not changed, by the way, in all of my
20 tenure at Carmike. And I can't tell you what that
21 was, whether it was a penny or a quarter or what
22 monetary amount per ticket sale.

23 Q. And when you say your tenure, you mean while
24 you were president or on the board, too?

25 A. Both.

1 Q. Okay.

2 A. I was told it had been in existence forever.

3 Q. And you just don't remember what it was?

4 A. I don't.

5 Q. The -- did you receive quarterly reports from
6 Comdata to track credit card and other expenses?

7 A. I did not.

8 Q. Did someone?

9 A. I can't answer with certainty, but I would
10 assume so.

11 Q. Did you receive quarterly reports from Nexus?

12 A. I did not. Same answer.

13 Q. Okay. Did -- you had to have a password to
14 enter both of those systems, right?

15 A. That is right.

16 Q. And you had to have certain level of authority
17 in order to approve expenses on those systems.

18 A. That is also correct.

19 Q. So if someone tried to approve an expense that
20 was above their level of authority, the system
21 wouldn't let them do it?

22 A. That's correct.

23 Q. And then once the expense or charge was
24 approved on the systems, accounts payable would take
25 care of making sure it was paid?

1 A. I believe that's correct.

2 Q. All right. And was there a similar system for
3 payroll, meaning there was a software system that ran
4 payroll?

5 A. There was an automated system that ran
6 payroll, yes.

7 Q. Do you know what it was?

8 A. I do not.

9 Q. The controller was in charge of that?

10 A. The payroll person that ran the department
11 reported to the controller, yes.

12 Q. Okay. Did you see the quarterly tax returns
13 on payroll?

14 A. I did not.

15 Q. Again, through the accounting department, they
16 would deal with that?

17 A. Yes, yes.

18 Q. Did you see a quarterly breakdown of how
19 payroll was being paid out per department or per
20 division or anything like that?

21 A. No, not specifically for payroll.

22 Q. Okay.

23 MS. PREBULA: I think that's all the questions
24 I have for you. And Mr. Gerakitis will coordinate
25 with you about signature.

1 **DEPONENT PASSMAN: Okay.**

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3
4 **(Deposition concluded at 5:14 p.m.)**
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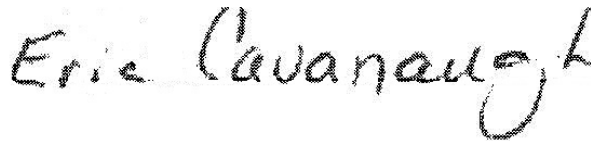
1 STATE OF GEORGIA

2 COUNTY OF MUSCOGEE

3
4
5 C E R T I F I C A T E
6
7

8 The forgoing transcript of the proceedings
9 was taken before me as a Certified Court Reporter
10 in and for the State of Georgia and reduced to
11 typewriting under my direction and supervision, and
12 I certify that it is a true and correct transcript
13 to the best of my ability of the proceedings.
14

15
16 This 20th day of October, 2017.
17

18 
19
20

21 Eric Cavanaugh

22 Certified Court Reporter

23 No. 2560
24
25

1 COURT REPORTER'S DISCLOSURE STATEMENT

2
3 I, ERIC CAVANAUGH, Georgia Certified Court
4 Reporter, Certificate Number 2560, in compliance
5 with Code Section 9-11-28 and Code Section
6 15-14-37, make the following disclosure about all
7 arrangements, financial and otherwise, involving
8 the foregoing deposition:
9

10 1.) I was contacted directly by telephone
11 regarding scheduling of the deposition as to date,
12 time and place by the office of the scheduling
13 attorney, or received a message from the office of
14 the scheduling attorney by answering machine and
15 returned the call, with scheduling of the deposition
16 as to date, time and place confirmed, and no prior
17 financial arrangements were negotiated between
18 counsel and myself.
19

20 This 10th day of October, 2017.
21
22

23 *Eric Cavanaugh*
24
25 Eric Cavanaugh, CCR #2560.

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DEPOSITION ERRATA SHEET

Assignment No. 37430

Case Caption: CRYSTAL TRAWICK

vs. CARMIKE CINEMAS, INC.

Witness: DAVID PASSMAN - October 11, 2017

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the _____ day of

_____, 20____.

DAVID PASSMAN

Sworn to and subscribed before me this _____ day
of _____, 20____.

Notary Public

My commission expires_____



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